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N. 2869 No. 12886

**United States  
Court of Appeals**

for the Ninth Circuit.

*See vols. 2870-71-72*

CITIZENS NATIONAL TRUST & SAVINGS  
BANK OF LOS ANGELES, Appellant,

vs.

J. B. LONDONO, DULIEN STEEL PRODUCTS,  
INC., OF CALIFORNIA and DULIEN  
STEEL PRODUCTS, INC., Appellees.

And

DULIEN STEEL PRODUCTS OF CALIFOR-  
NIA and DULIEN STEEL PRODUCTS,  
INC., Appellants,

vs.

J. B. LONDONO and CITIZENS NATIONAL  
TRUST & SAVINGS BANK OF LOS  
ANGELES, Appellees.

**Transcript of Record**

In Eight Volumes

**Volume I  
(Pages 1 to 500)**

**FILED**

**Appeal from the United States District Court for the  
Southern District of California,  
Central Division.**

**NOV 29 1951**





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Los Angeles 13, Calif.



In the District Court of the United States, Southern  
District of California, Central Division

No. 7358-PH

J. B. LONDONO,

Plaintiff,

vs.

DULIEN STEEL PRODUCTS, INC., OF CALI-  
FORNIA, a Corporation; DULIEN STEEL  
PRODUCTS, INC., a Corporation; CITI-  
ZENS NATIONAL TRUST AND SAVINGS  
BANK OF LOS ANGELES, a National Bank-  
ing Association; MATSON NAVIGATION  
COMPANY, a Corporation; ONE DOE, TWO  
DOE, THREE DOE, ONE DOE COMPANY,  
a Corporation; TWO DOE COMPANY, a  
Corporation; FOUR DOE and FIVE DOE,  
Copartners Doing Business Under the Firm  
Name and Style of SIX DOE COMPANY,

Defendants.

### COMPLAINT

Damages for Breach of Warranty, Negligence, and  
Issuance of False Bill of Lading

Comes Now the plaintiff and for cause of action  
against the defendants complains and alleges:

First Cause of Action  
(Dulien)

I.

That plaintiff is a citizen of and resides in the

Republic of Colombia, South America, and has no place of business in the United States of America; and the defendants are citizens [2\*] of the State of California. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand (\$3,000.00) Dollars.

## II.

(a) That at all times herein mentioned defendant Dulien Steel Products, Inc., of California, was and now is a corporation organized and existing under the laws of the State of California. That plaintiff is informed and believes and upon that ground alleges that at all times herein mentioned the names of defendants Dulien Steel Products, Inc., of California, Dulien Steel Products, Inc., One Doe Company and Two Doe Company were used interchangeably by said defendants and each of them; and the said defendants are collectively hereinafter referred to as "Dulien" or "defendant Dulien."

(b) That at all times herein mentioned the defendant Citizens National Trust and Savings Bank of Los Angeles, sometimes hereinafter referred to as the "bank" or "defendant bank," was and now is a national banking association, organized and existing under the laws of the United States of America and located and having its principal place of business within the jurisdiction of this Court, to wit: in the City of Los Angeles, County of Los Angeles, State of California; and during all the times herein mentioned the said defendant was and

---

\*Page numbering appearing at foot of page of original Certified Transcript of Record.



now is engaged in a general banking business, in Los Angeles, California.

(c) That at all times herein mentioned the defendant Matson Navigation Company, hereinafter referred to as "Matson," was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco, California, but maintaining also a business office in the City of Los Angeles, California.

(d) That at all times herein mentioned each of [3] the defendants One Doe Company and Two Doe Company was and now is a corporation organized and existing under and by virtue of the laws of the United States, or of one of the States thereof, and doing business in California.

### III.

That the defendants One Doe, Two Doe, Three Doe, One Doe Company, a corporation; Two Doe Company, a corporation; and Four Doe and Five Doe, Co-partners doing business under the firm name and style of Six Doe Company, are sued herein under fictitious names, their true names being unknown to plaintiff, and plaintiff will upon the ascertainment of their true names ask leave of Court to make the proper substitutions thereof herein. That at all times herein mentioned each of the said fictitiously named defendants had or claimed and now has or claims some interest in the business conducted under the names of Dulien

Steel Products, Inc., of California, and Dulien Steel Products, Inc., and was and is responsible for and has confirmed the herein alleged conduct of said named defendants Dulien.

#### IV.

That on or about the 11th day of July, 1946, at Los Angeles, California, the defendant Dulien orally offered to sell to plaintiff at the price of One Hundred Seven (\$107.00) Dollars, per ton, f.o.b. Los Angeles, approximately 2700 tons of unused Government surplus barbed wire, hereinafter referred to as "wire," consisting of 1350 tons of galvanized wire and 1350 tons of black wire, which said defendant then orally represented to plaintiff was owned by said defendant and was in transit from Honolulu, Hawaii, on the Matson Navigation Company's steamship White Squall and was due to arrive in the harbor at Los Angeles, California, on or about July 22, 1946, and then and there exhibited to plaintiff a number of sample coils, or rolls, of good black and galvanized wire free from rust and covered with a rust [4] preventing grease, and produced and exhibited to plaintiff certain additional sample cuttings of good black wire, likewise free from rust, and, as inducement to plaintiff to make such purchase, orally agreed and expressly warranted that the wire to be sold to plaintiff had been, was and would be covered with a coat of protective, rust-preventing grease and was and would be in all respects equal in quality to said exhibited coils and sample cuttings.

## V.

That plaintiff, after examining said samples and in reliance upon said defendant Dulien's said representations and express warranty, accepted said offer and agreed to purchase from defendant Dulien said wire, and agreed to pay therefor the sum of \$288,900.00 payable upon drafts by defendant Dulien against credits to be established with defendant bank before July 22nd, 1946. That on account of delay of the White Squall in arriving in the Long Beach Harbor, as hereinafter alleged, said date of July 22nd, 1946, was thereafter by defendant Dulien orally extended to include July 27th, 1946.

## VI.

That said purchase and sale were evidenced by a written sale order on a form supplied and prepared by Dulien the following day, that is, July 12, 1946, dated July 12, 1946, bearing No. LA-712, duly signed by defendant Dulien in the name of Dulien Steel Products, Inc., and approved and accepted in writing by plaintiff, a copy of which sale order is attached hereto, marked Exhibit "A" and hereby made a part hereof. That thereafter, on July 26, 1946, defendant Dulien orally represented to plaintiff that the shipment of wire would be only 2300 tons of which defendant Dulien would retain for itself 300 tons, to which change in quantity plaintiff orally agreed, and thereupon and in that manner by said mutual agreement between plaintiff and defendant Dulien the quantity of plaintiff's said purchase was reduced to [5] 2000 tons.



## VII.

That said steamship was delayed and docked on July 26, 1946, at Pier A at the Long Beach, California, harbor instead of the Los Angeles harbor; and on July 27, 1946, before plaintiff had seen any of the wire, and within the time which had been by defendant Dulien orally extended to include that day, plaintiff purchased from defendant bank upon a written application therefor and received from said bank and delivered to defendant Dulien said bank's irrevocable letter of credit, by its terms good until July 31, 1946, in favor of defendant Dulien for \$214,000.00 to cover the purchase price of 2,000 tons of wire at \$107.00 per ton, a true copy of which letter of credit is attached hereto marked Exhibit "C" and hereby made a part hereof. That a copy of plaintiff's application for said letter of credit is attached hereto marked Exhibit "B" and hereby made a part hereof.

That by the terms of said letter of credit and the written application therefor defendant bank was instructed by plaintiff, and it bound itself, to pay to defendant Dulien \$214,000.00 on Dulien's sight drafts accompanied by a full set of clean on board ocean bills of lading made out to order, endorsed in blank and marked freight prepaid, and by commercial invoices evidencing shipment of 2,000 tons of barbed wire in one shipment, invoiced on basis of c.i.f. Los Angeles harbor to be shipped from Honolulu, Hawaii, to Los Angeles harbor. That on the same date of July 27th, 1946, and simultaneously therewith plaintiff orally in-



structed the bank that upon the bank's receipt of said required bills of lading it should give authority to plaintiff's Los Angeles shipping agent, Mattoon & Co., Inc., to ship said wire to South America, subject to directions to be thereafter given by plaintiff. [6]

### VIII.

That on July 29, 1946, before plaintiff had seen any of said wire defendant bank paid to defendant Dulien upon Dulien's drafts against said letter of credit the sum of \$214,000.00, which sum was the full agreed purchase price of 2,000 tons of wire, and took up said letter of credit.

### IX.

That commencing on July 29, 1946, and continuing for several days thereafter until completion of the unloading, there were unloaded from said ship onto the dock at Pier A, Long Beach, California, by defendants Dulien and Matson and placed on dock space chalk-marked for defendant Dulien only 2219 tons of wire instead of 2300 tons; and before plaintiff learned that said shipment was 81 tons short of 2300 tons, defendant Dulien removed from the dock for its own use or other disposition 300 tons and that therefore the delivery of wire to plaintiff was 81 tons short of the 2000-ton quantity for which defendant bank, under plaintiff's letter of credit, had made payment to Dulien.

### X.

That none of said wire was of the quality or

in the condition warranted by defendant Dulien or according to the samples exhibited by Dulien to plaintiff, as above alleged in paragraph IV hereof, but the entire shipment was badly rusted and unmerchantable and inferior in all respects to said samples and was of a then undetermined value. That plaintiff is informed and believes and upon that ground alleges that defendant Dulien had purchased said wire from the United States Government in Honolulu for about \$28.00 per ton because it was badly rusted and that said Dulien well knew its rusty condition at the time it made the above-alleged warranty to plaintiff. That in an effort to determine the reasonable market value of said rusty wire at Los Angeles and for the purpose of minimizing the loss thereon, plaintiff, [7] with the written consent of defendant bank and defendant Dulien and after prior written notice to defendant Matson, sold to Gonzales & Blanco, of Los Angeles, California, 25 tons of said wire at the price of \$65.00 per ton for the purpose of experimental cleaning, called "pickling," by the purchaser; that said experiment was made by the purchaser and the result thereof was the ascertainment, and plaintiff hereby alleges, that 1760 tons of the wire was in such bad condition that there was no market for it in Los Angeles County for use in the United States and its highest reasonable market value and the best price obtainable for it in Los Angeles County for export was \$51.00 per ton; and that 134 tons of said wire was so rusty that its value in Los Angeles County was only \$4.50 per ton,

and by and with the written consent of the defendants Dulien and the bank 104 tons thereof was thereafter sold for junk at \$4.50 per ton.

# XI.

That defendants Dulien and Matson caused said wire to be unloaded onto the dock without segregation as to quality, and in order to determine the reasonable market value thereof in Los Angeles County as \$51.00 per ton, or any other definite sum, and in order to minimize the loss resulting from the condition of said wire as delivered, it was reasonably necessary that there be expended or incurred, and the plaintiff for that purpose, prior to October 22nd, 1946, did expend or authorize the expenditure of the following sums of money, or incurred the following obligations, in the necessary selection, segregation and moving of said wire on the dock, and in wharf and dock charges thereon while said wire remained upon the dock at Pier A in Long Beach, to wit:

Dock Storage.....	\$2,837.45
Inspection by Los Angeles Cargo	
Appraisers .....	39.85
Segregation and supervision.....	48.00
Extra drayage on account of poor	
condition of wire.....	130.50
Sorting labor on account of poor	
condition of wire.....	2,734.86
Extra charges by Mattoon & Co., Inc.....	750.00
	<hr/>
	\$6,540.66



That each and all of said special expenses constituted additional loss and damage as a direct and proximate result of defendant Dulien's said misrepresentations and its said breach of warranty as to the quality and quantity of the wire so sold to plaintiff.

## XII.

That the reasonable market value in Los Angeles County, California, on July 29, 1946, and for four months thereafter of barbed wire of the character and quality of the samples exhibited to plaintiff by Dulien and so warranted by Dulien to plaintiff was \$160.00 per ton for galvanized wire and \$120.00 per ton for black wire, or an average of \$140.00 per ton of a 2000-ton supply consisting of one-half, or 1000 tons, of black wire and one-half, or 1000 tons, of galvanized wire.

## XIII.

That at no time between July 29, 1946, and October 22, 1946, was there available to plaintiff in the State of California, good barbed wire of the type and quality which defendant Dulien agreed to sell to plaintiff which plaintiff could have obtained from any other source as a substitute for that which Dulien had failed to deliver according to its warranty, and at all such times defendant Dulien well knew that fact.

## XIV.

That on July 12, 1946, at the time plaintiff placed his said order with Dulien and Dulien accepted said order, plaintiff told Dulien and Dulien knew



that plaintiff's purpose [9] in purchasing said wire was to ship it to South America for resale; and Dulien also at all times between July 11th and October 22nd, 1946, knew the condition of the market for barbed wire at Los Angeles, knew the demand for barbed wire at Los Angeles and knew the value and the market price for export of barbed wire at Los Angeles.

### XV.

That as the direct and proximate result of defendant Dulien's said breach of warranty and its said misrepresentations as to said wire it became and was necessary that plaintiff remain in California until proper disposition could be made of said wire for the purpose of minimizing the loss, and plaintiff did remain in California away from his own country and business for three months, and his living expense cost of such stay was \$3,000.00; and plaintiff alleges that within that time he expended that sum in living expenses and that the expenditure thereof was made necessary in the minimizing of the loss on said wire.

### XVI.

That as the direct and proximate result of Dulien's failure to deliver the quantity of said wire purchased by plaintiff and its breach of warranty as to the wire actually delivered to or made available to plaintiff, all as above alleged, plaintiff has been damaged in the following sums of money, to wit:

- (a) The full purchase price of \$107.00 per ton for 81 tons of wire which were never delivered to plaintiff, amounting to.....\$ 8,667.00 together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid; [20]
- (b) The difference between the purchase price of \$107.00 per ton and the sale price of \$65.00 per ton, or \$42.00 per ton, for 25 tons of wire sold to Gonzales & Blanco for experimental "pickling" as alleged in paragraph X hereof, amounting to ..... 1,050.00 together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;
- (c) The difference between the purchase price of \$107.00 per ton and the \$51.00 per ton reasonable market value at Los Angeles, California, of 1760 tons of wire, or \$56.00 per ton, amounting to..... 98,560.00 together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;
- (d) The difference between the purchase price of \$107.00 per ton and the \$4.50 per ton actual value at Los Angeles, California, of 134 tons

of wire, or \$102.50 per ton, amounting to..... 13,735.00

together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;

- (e) The amount of special expenses alleged in paragraph XI hereof amounting to..... 6,540.66

together with interest thereon [21] at the rate of 7% per annum from October 22, 1946, until paid;

- (f) The amount of plaintiff's special personal expenses alleged in paragraph XV hereof, amounting to.... 3,000.00

together with interest thereon at the rate of 7% per annum from October 22, 1946, until paid;

- (g) The plaintiff's loss of profits of \$33.00 per ton on the wire purchased from Dulien, being the difference between the purchase price of \$107.00 per ton and the \$140.00 per ton average reasonable market value at Los Angeles, Calif., of good wire such as was warranted by Dulien, on 2000 tons, amounting to ..... 66,000.00

---

Totaling, exclusive of

interest .....\$197,552.66

Wherefore, plaintiff demands judgment as hereinafter prayed.

Second Cause of Action  
(Bank)

I.

Plaintiff incorporates in this, his second cause of action, against the defendant Citizens National Trust and Savings Bank of Los Angeles, paragraphs I to VII, both inclusive, of his foregoing first cause of action, against defendant Dulien, and makes each of said paragraphs by this reference a part hereof [22] as though fully set forth herein at this point.

II.

That on July 29, 1946, before plaintiff had seen any of said wire and before any of said wire had been unloaded from the ship, defendant bank in disregard and violation of the terms of said letter of credit and the instructions given it by plaintiff in plaintiff's application therefor, and particularly without receiving from defendant Dulien any bill of lading whatsoever, negligently paid over and delivered to defendant Dulien the full agreed purchase price of 2,000 tons of wire, to wit: the sum of \$214,000.00.

III.

That there was thereafter unloaded on the dock at Pier A in Long Beach Harbor for plaintiff from said steamship White Squall only 1919 tons of wire, or 81 tons less than the 2000 tons paid for by defendant bank on plaintiff's behalf as above alleged.



That none of said wire for which the defendant bank made said payment of \$214,000.00 was of the quality or in the condition warranted by defendant Dulien, or according to the samples exhibited by Dulien to Plaintiff as above alleged, but the entire lot was badly rusted and unmerchantable and inferior in all respect to said samples and was of a then undetermined value; and said shipment was 81 tons short of the agreed quantity. That in an effort to determine what could be done with said wire and to minimize the loss thereon, plaintiff then, with the full knowledge and written consent of defendant bank and defendant Dulien, sold 25 tons of said wire at the price of \$65.00 per ton for the purpose of experimental cleaning, called "pickling," by the purchaser. That said experiment was made and the result thereof was the ascertainment, and plaintiff hereby alleges, that 1760 [23] tons of the wire was in such rusty condition that there was no market for it in Los Angeles County for use in the United States and its highest market value and the best price obtainable for it in Los Angeles County for export was \$51.00 per ton; that 134 tons of said wire was in such rusty condition that its reasonable market value in Los Angeles County was only \$4.50 per ton, and by and with the written consent of the defendants Dulien and the bank 104 tons thereof was sold for junk at \$4.50 per ton.

#### IV.

That defendants Dulien and Matson caused said wire to be unloaded onto the dock without segre-

gation as to quality, and in order to determine the reasonable market value thereof in Los Angeles County as \$51.00 per ton, or any other definite sum, and in order to minimize the loss resulting from the condition of said wire as delivered, it was reasonably necessary that there be expended or incurred, and the plaintiff for that purpose, prior to October 22nd, 1946, did expend or authorize the expenditure of the following sums of money, or incurred the following obligations, in the necessary selection, segregation and moving of said wire on the dock, and in wharf and dock charges thereon while said wire remained upon the dock at Pier A in Long Beach, to wit:

Dock Storage.....	\$2,837.45
Inspection by Los Angeles	
Cargo Appraisers.....	39.85
Segregation and supervision.....	48.00
Extra drayage on account of poor	
condition of wire.....	130.50
Sorting labor on account of poor	
condition of wire.....	2,734.86
Extra charges by Mattoon & Co., Inc.....	750.00
	<hr/>
	\$6,540.66

That each and all of said special expenses constituted additional loss and damage as a direct and proximate result of defendant bank's negligence in failure to follow plaintiff's instructions and the terms of said letter of credit, as alleged in the

preceding paragraph II of this plaintiff's second cause of action.

V.

That the reasonable market value in Los Angeles County, California, on July 29, 1946, and for four months thereafter of barbed wire free from rust but otherwise of the type and quality of the wire for which defendant bank so paid defendant Dulien and which pursuant to said payment was delivered to plaintiff was \$160.00 per ton for galvanized wire and \$120.00 per ton for black wire, or an average of \$140.00 per ton of a 2,000 ton supply consisting of one-half, or 1000 tons, of black wire and one-half, or 1000 tons, of galvanized wire.

VI.

That at no time between July 29, 1946, and October 22, 1946, was there available to plaintiff in the State of California, good barbed wire free from rust but otherwise of the type and quality of that which was delivered to plaintiff pursuant to the bank's above-alleged payment to Dulien, which plaintiff could have obtained from any other source as a substitute for the rusty wire so delivered.

VII.

That on July 27, 1946, when plaintiff purchased from defendant bank the above-alleged letter of credit plaintiff told said bank and said bank knew that plaintiff's purpose in purchasing the wire for payment for which said letter of credit was to be used was to ship said wire to South America for



resale; and plaintiff is informed and believes and upon that ground alleges that defendant bank at that time knew the market value [25] in Los Angeles County of good wire of the type and quality ordered by plaintiff and for which a clean bill of lading could have been properly issued.

### VIII.

That as the direct and proximate result of defendant bank's violation of plaintiff's instructions and the terms of said letter of credit and the consequent delivery to plaintiff of rusty wire instead of wire free from rust, as above alleged it became and was necessary that plaintiff remain in California until proper disposition could be made of said rusty wire for the purpose of minimizing the loss, and for that purpose plaintiff did remain in California away from his own country and business for three months, and that the cost to him of such stay was \$3,000.00; and plaintiff alleges that within that time he expended that sum in living expenses and that the expenditure thereof was made necessary in the minimizing of the loss on said wire.

### IX.

That after the full agreed purchase price of said wire had been paid by defendant bank to defendant Dulien as above alleged, and after said wire had been unloaded from the ship, plaintiff first learned that no bill of lading had been obtained by the bank, and all plaintiff's subsequent conduct herein alleged in relation to said wire has been and was



with the bank's full knowledge and consent and under an agreement that it should be without prejudice to any prior existing rights of either of them against the other.

X.

That as the direct and proximate result of defendant bank's payment of said \$214,000.00 purchase price of [26] said wire without demanding and receiving from defendant Dulien, the seller, the clean on board order bills of lading required by plaintiff in plaintiff's instructions to defendant bank, as above alleged, and by reason of said bank's said payment of said sum for wire other than and different from that specified in and to which plaintiff would have been entitled under said letter of credit, plaintiff has been damaged in the following sums of money on the following accounts, to wit:

- (a) The full purchase price of \$107 per ton for 81 tons of wire which were never delivered to plaintiff, amounting to.....\$ 8,667.00 together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;
- (b) The difference between the purchase price of \$107.00 per ton and the sale price of \$65.00 per ton, or \$42.00 per ton, for 25 tons of wire sold to Gonzales & Blanco for experimental "pickling" as alleged in

	paragraph III hereof, amounting to .....	1,050.00
	together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;	
(c)	The difference between the purchase price of \$107.00 per ton and the \$51.00 per ton reasonable market value at Los Angeles, California, of 1760 tons of wire, or \$56.00 per ton, amounting to.....	98,560.00
	together with interest thereon [27] at the rate of 7% per annum from July 29, 1946, until paid;	
(d)	The difference between the purchase price of \$107.00 per ton and the \$4.50 per ton actual value at Los Angeles, California, of 134 tons of wire, or \$102.50 per ton, amounting to.....	13,735.00
	together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;	
(e)	The amount of special expenses alleged in paragraph IV hereof amounting to.....	6,540.66
	together with interest thereon at the rate of 7% per annum from October 22, 1946, until paid;	
(f)	The amount of plaintiff's special personal expenses alleged in paragraph VIII hereof amounting to..	3,000.00

together with interest thereon at the rate of 7% per annum from October 22, 1946, until paid;

- (g) The plaintiff's loss of profits of \$33.00 per ton on the wire purchased from Dulien, being the difference between the purchase price of \$107.00 per ton and the \$140.00 per ton average reasonable market value at Los Angeles, California, of good wire such as was warranted by Dulien, on 2000 [28] tons, amounting to..... 66,000.00

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Totaling, exclusive of interest..\$197,552.66

## XI.

That a part of the purchase price of said \$214,000.00 letter of credit was represented by a loan of \$54,000.00 made to plaintiff by defendant bank through its Loan Department which, it was orally agreed between said bank and plaintiff on the date said letter of credit was purchased, to wit: July 27, 1946, should be represented by plaintiff's promissory note to be thereafter executed; and plaintiff also agreed to pay the bank its usual charge of \$535.00 for such letter of credit and for the bank's services in making payment thereunder and on July 31, 1946, upon the bank's representations to plaintiff, which it then made, that it had received the required bills of lading and had paid Dulien's drafts for \$214,000.00 against said letter of credit, plaintiff believing said representations and having



no knowledge of any failure on the part of the bank to comply with plaintiff's instructions and the terms of said letter of credit regarding the required bills of lading, signed and delivered to the bank his promissory note dated July 31, 1946, prepared by the bank and payable to the bank, for \$54,535.00, covering the principal amount of said loan of \$54,000.00 and the bank's said charge of \$535.00 for the said letter of credit and the bank's said agreed services.

## XII.

That defendant bank now holds plaintiff's said promissory note of July 31, 1946, originally for \$54,535.00, upon which plaintiff is entitled to credits for cash payments of \$40,814.45 made thereon and a refund of the bank's charge of \$535.00 included therein, totalling \$41,349.45; and, after [29] due allowance therefor, defendant bank is entitled upon plaintiff's demand herein to a credit of \$13,185.55 representing the unpaid balance on said note.

Wherefore, plaintiff demands judgment as hereinafter prayed.

## Third Cause of Action (Matson)

### I.

Plaintiff incorporates in this, his third cause of action, against defendant Matson Navigation Company, paragraphs I to VII, both inclusive, of his foregoing first cause of action, against defendant Dulien, and paragraphs II and III of his foregoing



second cause of action, against the defendant bank, and makes each of said paragraphs by this reference a part hereof as though fully set forth herein at this point.

## II.

That defendant Matson was the owner, or the operating agent of the owner, of the White Squall, the ship upon which said wire was shipped from Honolulu, Hawaii, to Los Angeles, and the shipment of said wire was made under a bill of lading issued by defendant Matson to defendant Dulien. That plaintiff does not have and never has had said bill of lading or any copy thereof, but plaintiff is informed and believes and upon that ground alleges: that said bill of lading was for approximately 2300 tons of wire, or the equivalent thereof in pounds, whereas the quantity of wire actually shipped thereunder was only 2219 tons or 81 tons short of the quantity shown in said bill of lading; that said bill of lading was what is in the shipping business known as a straight clean bill of lading, that is, it was a straight bill of lading which upon its face showed that defendant Dulien was both the shipper and the consignee [30] of the wire and that said wire had been received by Matson from the shipper (Dulien) in apparent good order except as therein otherwise noted and that there were no exceptions noted in said bill of lading.

## III.

That plaintiff is informed and believes and upon that ground alleges that at the time said bill of

lading was issued by Matson said wire was obviously badly rusted and was not in such condition as to warrant the issuance of a clean bill of lading thereon but, on the contrary, was in such obviously bad condition on account of said rust as to require, under the provisions of Section 22 of Chapter 415 of the Act of August 29, 1916, (U.S.C.A. Tit. 46, Section 102), the notation on the bill of lading of exceptions to the "apparent good order" representation therein contained; that said bill of lading consisted of a printed form into which there had been typed certain information applicable to this particular shipment, showing, among other things, the name of the shipper, the name of the ship, the name of the consignee and the quantity of wire supposed to have been delivered to the carrier; that thereafter in conformance with said bill of lading a freight bill upon a printed form was issued by defendant Matson containing in typewriting those same insertions copied from said bill of lading and that said freight bill did not contain any exceptions or notations of exception to the "good order and condition" representation made in said bill of lading as to the condition of said wire; that it was then the custom and practice of defendant Matson, with which custom and practice defendant bank was then familiar, to cause each freight bill issued by it to contain all the descriptive information about the shipment covered thereby as was contained in the bill of lading issued upon the same shipment; and that therefore the freight bill so issued by defendant Matson was false in that it did not [31] contain

a notation of the obviously rusty condition of said wire and it was for 81 tons more wire than was actually shipped; that a copy of said freight bill is hereto attached marked Exhibit "D" and hereby made a part hereof; that when defendant Dulien on July 29, 1946, presented to defendant bank Dulien's drafts for \$214,000.00 drawn against plaintiff's said letter of credit, as above alleged, said drafts were accompanied by the above-mentioned freight bill instead of the clean order bill of lading specified in and required by plaintiff's above alleged instructions to defendant bank and by the terms of said letter of credit, and that defendant bank carelessly and negligently mistook said freight bill for the required bill of lading and made said \$214,000.00 payment to Dulien thereon.

#### IV.

That the negligence of defendant Matson in issuing said false bill of lading and said freight bill following the inserted language of said bill of lading combined with the negligence of defendant bank in paying thereon, and the direct and proximate result of said combined negligence of said defendants Matson and the bank together was loss and damage to the plaintiff in the following sums of money on the following accounts, to wit:

- (a) The full purchase price of \$107.00  
per ton for 81 tons of wire which  
were never delivered to plaintiff,  
amounting to.....\$ 8,667.00  
together with interest thereon at the



rate of 7% per annum from July 29, 1946, until paid;

- (b) The difference between the purchase price of \$107.00 per ton and the sale price of \$65.00 per ton, or [32] \$42.00 per ton, for 25 tons of wire sold to Gonzales & Blanco for experimental "pickling" as hereinbefore alleged, amounting to. 1,050.00  
together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;
- (c) The difference between the purchase price of \$107.00 per ton and the \$51.00 per ton reasonable market value at Los Angeles, California, of 1760 tons of wire, or \$56.00 per ton, amounting to..... 98,560.00  
together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;
- (d) The difference between the purchase price of \$107.00 per ton and the \$4.50 per ton actual value at Los Angeles, California, of 134 tons of wire, or \$102.50 per ton, amounting to..... 13,735.00  
together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;
- (e) The extra expense set out in full in paragraph XI of plaintiff's first



cause of action, amounting to..... 6,540.66  
together with interest thereon at  
the rate of 7% per annum from Oc-  
tober 22, 1946, until paid; [33]

- (f) Plaintiff's personal living expenses  
in California for three months  
while attempting to minimize the  
loss on said wire, as set out in full  
in paragraph XV of plaintiff's first  
cause of action, amounting to..... 3,000.00  
together with interest thereon at  
the rate of 7% per annum from  
October 22, 1946, until paid; \_\_\_\_\_

Totaling, exclusive of interest..\$131,552.00

## V.

That plaintiff is informed and believes and upon  
that ground alleges that the steamship White  
Squall, upon which said wire was transported from  
Honolulu to Long Beach, California, is now in  
Australian waters and is sailing under another  
name.

Wherefore, plaintiff prays judgment as follows:

1. Against defendants Dulien Steel Products,  
Inc., of California, Dulien Steel Products, Inc., One  
Doe, Two Doe, Three Doe, One Doe Company, Two  
Doe Company, Four Doe, Five Doe and Six Doe  
Company, on plaintiff's first cause of action, in the  
sum of \$197,552.66;

2. Against defendant Citizens National Trust  
and Savings Bank of Los Angeles, on plaintiff's

second cause of action, in the sum of \$184,367.11 and the cancellation of plaintiff's promissory note dated July 31, 1946;

3. Against defendant Matson Navigation Company, on plaintiff's third cause of action, in the sum of \$131,552.66; [34]

4. Against all defendants for interest at the rate of 7% per annum upon all amounts found to be due from the respective dates of accrual thereof until paid; and

5. For any and all other proper relief.

/s/ THOMAS S. BUNN,

Attorney for Plaintiff. [35]

State of California,

County of Los Angeles—ss.

J. B. Londono, being first duly sworn, deposes and says: That he is the plaintiff in the foregoing and above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

/s/ J. B. LONDONO.

Subscribed and sworn to before me this 16th day of July, 1947.

[Seal] /s/ GEORGIA CUMMING,

Notary Public in and for said County and [36]  
State.

## DULIEN STEEL PRODUCTS, INC.

11601 SOUTH ALAMEDA STREET  
LOS ANGELES, CALIF.

[ July 12, 1946 ]

SALE ORDER NO. LA-712

SOLD TO: J.B. LONDONO,  
408 SOUTH SPRING STREET, ROOM #306,  
LOS ANGELES, CALIF

We confirm having sold to you the following goods under the terms and conditions as stated below:

COMMODITY: UNUSED GOVERNMENT SURPLUS BARBED WIRE, AS PURCHASED BY  
SELLER FROM INTERIOR DEPARTMENT

QUANTITY: APPROXIMATELY 2,700 NET TONS, AS FOLLOWS:  
1,350 NET TONS GALVANIZED - 10% MORE OR LESS  
1,350 NET TONS BLACK - 10% MORE OR LESS

SPECIFICATIONS: 12 and 12 $\frac{1}{2}$  GAUGE TWO STRAND WITH FOUR POINT BARBS  
SPACED AT 3" and 4" INTERVALS

PRICE: \$ 107.00 PER NET TONS FOB STEAMER LOS ANGELES

SHIPMENT: IMMEDIATE - STEAMER DUE TO ARRIVE LOS ANGELES  
ABOUT JULY 22, 1946

TERMS: LETTER OF CREDIT FOR \$160,000.00 NOW ON DEPOSIT AT LOS  
ANGELES MAIN OFFICE OF CITIZENS NATIONAL BANK, SUBJECT  
TO FULL DRAFT ON DEPOSIT OF ON BOARD BILLS OF LADING.  
REMARKS: LETTER OF CREDIT FOR \$128,900.00 TO BE ESTABLISHED ON OR  
BEFORE JULY 22, 1946, SUBJECT TO DRAFT ON PRESENTATION  
OF DELIVERY RECEIPTS. ANY RAILROAD DEMURRAGE ACCRUING  
DUE TO NON-ESTABLISHMENT OF LETTER OF CREDIT BY JULY 22,  
1946, WILL BE FOR ACCOUNT OF BUYER.  
ACCEPTANCE OF MATERIAL SUBJECT TO REJECTION BY BUYER OF  
NOT MORE THAN 300 NET TONS, DUE TO EXCESSIVE WEATHERING.

All contracts and agreements are subject to strikes, riots and other conditions beyond our control.

APPROVED AND ACCEPTED:

DULIEN STEEL PRODUCTS, INC.

BY: *E. E. E. E.*





# Application for Commercial Letter of Credit

3645

JULY 27, 1946

TO CITIZENS NATIONAL TRUST & SAVINGS BANK  
OF LOS ANGELES  
Foreign Department  
Los Angeles 54, California

Please issue {by mail} ~~by mail~~ for our account an IRREVOCABLE\* LETTER OF CREDIT as follows:

in favor of DULIN STEEL PRODUCTS INC., 11601 SO. ALAMEDA ST., LOS ANGELES, CALIFORNIA

for account of J. B. LONDONO, LOS ANGELES, CALIFORNIA

up to the aggregate amount of US\$214,000.00,

available by drafts at sight drawn at your option on you or your correspondent

for 100 % of the invoice cost.

The drafts must be accompanied by the documents listed below marked with an X:

☒ Full set of clean ocean bills of lading made out to TOB order. endorsed in blank, freight prepaid.

☐ Delivery order of

(Please state name of company to issue same)

☐ Consular invoice.

☐ Insurance certificate covering marine war risk theft pilferage leakage breakage INSURANCE

Insurance is covered by ourselves under Policy No.

of  
covering all hazards and contingencies.

☐ Certificates of

(Please state name of company to issue same)

☐ Other documents

(If special documents are required, please state name of company to issue same)

and commercial invoices evidencing shipment of 2000 TONS BARRED VIRE

(Please mention commodity only, omitting details as to grade, quality, price, etc.)

in one ~~shipment~~ shipment

invoiced on basis of C.I.F. — ~~Los Angeles Harbor~~ Los Angeles Harbor

(Strike out all but one)

to be shipped

from Honolulu T.H. to Los Angeles Harbor

Credit to remain in force until JULY 31, 1946

Special instructions

I/We hereby agree that the credit shall be subject to your usual terms and conditions, and in consideration of the issuance thereof

I/We agree to sign your form of Letter of Credit Agreement as per copy on the reverse side hereof.

\$0.000. cash deposit

\$ Min. \$10.-

Yours very truly,

J. B. Londono

Address 408 South Spring St. Rm. 306, L.A.

By [Signature]

(over)

\*An Irrevocable Credit can only be issued with the consent of all parties concerned.

C.B. 48-488

NY-3076

EXHIBIT "B"  
(FACE)









# Citizens National Bank

Trust & Savings  
of Los Angeles

457 SOUTH SPRING STREET  
CABLE ADDRESS "CITBANK"

DELIN STEEL PRODUCTS INC.  
11601 SO. ALABAMA STREET  
LOS ANGELES, CALIFORNIA

IRREVOCABLE CREDIT NO. 3645

CERTIFICATE:

LOS ANGELES, CALIFORNIA JULY 27, 1946

WE HEREBY AUTHORIZE YOU TO VALUE ON US .....

FOR ACCOUNT OF J. B. LONDONO, LOS ANGELES, CALIFORNIA .....

UP TO THE AGGREGATE AMOUNT OF TWO HUNDRED FOURTEEN THOUSAND (US\$214,000.00) U.S. DOLLARS

AVAILABLE BY YOUR DRAFTS AT ..... SIGHT ..... FOR ..... INVOICE COST

TO BE ACCOMPANIED BY THE FOLLOWING DOCUMENTS

FULL SET CLEAN ON BOARD OCEAN BILLS OF LADING MADE OUT TO ORDER, BLANK ENDORSED, MARKED  
FREIGHT PREPAID -  
COMMERCIAL INVOICES -

RENDERING SHIPMENT OF: TWO THOUSAND (2,000) TONS BOXED WIRE  
..... C.I.F. LOS ANGELES HARBOR .....  
..... IN ONE SHIPMENT .....

FROM: HONOLULU T.H. .... TO: LOS ANGELES HARBOR .....

A COPY OF THE CONSULAR INVOICE, COMMERCIAL INVOICE AND ONE BILL OF LADING MUST BE  
FORWARDED BY THE NEGOTIATING BANK BY FIRST MAIL (IF POSSIBLE ON STEAMER CARRYING MERCHANDISE)  
DIRECT TO THE CITIZENS NATIONAL TRUST & SAVINGS BANK, LOS ANGELES, CALIFORNIA, ATTACHING TO  
THE DRAFT A STATEMENT TO THAT EFFECT. ALL REMAINING DOCUMENTS MUST ACCOMPANY THE DRAFT.

ALL DRAFTS DRAWN UNDER THIS CREDIT MUST BEAR THE FOLLOWING CLAUSE: "DRAWN UNDER  
CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES L.C. NO. 3645" AND ALL AMOUNTS SO  
DRAWN MUST BE ENDORSED ON THE BACK HEREOF

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS OF DRAFTS DRAWN  
UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY  
HONORED ON DUE PRESENTATION TO THE DRAVEE IF NEGOTIATED ON OR BEFORE JULY 31, 1946.

YOURS VERY TRULY,

Wm. H. Schroeder, Vice President & Mgr.

V. Glenn Powers, Pro-Manager

AGREEMENT ON REVERSE SIDE TO  
BE EXECUTED AND RETURNED TO  
CITIZENS NATIONAL TRUST & SAVINGS BANK  
OF LOS ANGELES

EXHIBIT "C"



FORM NO. F-107  
REV. 10-28-57-383

# **MATSON NAVIGATION COMPANY** **ORIGINAL FREIGHT BILL**

CODE 93990

DATE <b>7/27/46</b>	PORT OR PLACE OF LOADING <b>HONOLULU TH</b>	PORT OR PLACE OF DISCHARGE <b>LONG BEACH</b>	NAME OF VESSEL <b>SS WHITE SQUALL</b>	VOY. NO. <b>96/513</b>	S/L NO. <b>LA 29</b>
SHIPPER <b>WILMINGTON CAL</b>			FOR TRANS-SHIPMENT TO <b>VIA</b>		

DULIEN STEEL PRODS OF CALIF C/O LACY HOFIUS	CONSIGNED TO <input checked="" type="checkbox"/> (MAILING ADDRESS—NOT FOR PURPOSES OF DELIVERY) DULIEN STEEL PRODUCTS OF CALIF 11611 SOUTH ALAMEDA ST LOS ANGELES CALIF
--	---

MARKS (AS GIVEN BY SHIPPER)	PACKAGES	KIND OF PACKAGE	DESCRIPTION OF GOODS AND CONTENTS OF PACKAGES (AS GIVEN BY SHIPPER)	SHIPPER'S MEASUREMENT AND WEIGHT									
				CUBIC FEET	WEIGHT								
<b>NONE</b> <i>VA 2421</i> <div data-bbox="10 594 238 776"> <table border="1"> <tr><td colspan="2">PAYMENT RECEIVED</td></tr> <tr><td>CASH</td><td></td></tr> <tr><td>CHECK</td><td>25299.62</td></tr> <tr><td>HD - NOT BILLED</td><td></td></tr> </table> </div>	PAYMENT RECEIVED		CASH		CHECK	25299.62	HD - NOT BILLED		<b>55428</b>	<b>ROLLS BARBED WIRE</b>		<b>4,599.948</b>	
PAYMENT RECEIVED													
CASH													
CHECK	25299.62												
HD - NOT BILLED													
<div data-bbox="393 578 694 842"> <p><b>MATSON NAVIGATION CO.</b></p> <p><b>PAID</b></p> <p><b>JUL 28 1946</b></p> <p><b>Wilmington Branch Office</b></p> </div>													
<b>TOTAL PACKAGES</b>			<b>WEIGHTS AND OR MEASUREMENTS SUBJECT TO CORRECTIONS</b>										

CUBIC FEET	WEIGHT	RATE	FREIGHT	TRUCK TAX	TOLL OR WHARFAGE	TERRITORIAL TOLL	ADVANCE CHARGES	P. H. T. CHARGE	TOTAL FREIGHT
	4,599.948	10.30	23689.73		574.99	919.90			25184.62

## **ORIGINAL FREIGHT BILL**

COMPANY WILL NOT BE RESPONSIBLE FOR FREIGHT REMAINING ON THE DOCK LONGER THAN 24 HOURS AFTER ARRIVAL OF STEAMER.  
 DEMURRAGE WILL BE ASSESSED ON ALL UNDELIVERED SHIPMENTS IN ACCORDANCE WITH RULES AND REGULATIONS OF BOARD OF HARBOR COMMISSIONERS.

<b>TOTAL PREPAID</b>
<b>TOTAL COLLECT</b>
<b>25184.62</b>

EXHIBIT "D"  
(face)





This Bill of Lading endorsed in full to J.B.Londone for  
not more than 4,000,000 pounds. Balance of shipment to  
be picked up by us.

Dulien Steel Products Inc of Calif.

L. L. London

EXHIBIT "D"  
(back)

[Endorsed]: Filed July 17, 1947.



District Court of the United States for the Southern  
District of California, Central Division

Civil Action File No. 7358-PH

SUMMONS IN CIVIL ACTION

To the Above-Named Defendant:

You are hereby summoned and required to serve upon Thomas S. Bunn, plaintiff's attorney, whose address is 725 Citizens National Bank Bldg., 453 South Spring St., Los Angeles 13, Calif., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal]                      EDMUND L. SMITH,  
Clerk of Court.

By /s/ EDWARD F. DREW,  
Deputy Clerk.

Date: July 17, 1947.

Note—This summons is issued pursuant to Rule 4  
of the Federal Rules of Civil Procedure. [43]

Return of Service of Writ

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the  
annexed Summons and Complaint on the therein-

named Dulien Steel Products, Inc., by handing to and leaving a true and correct copy thereof with Louis Dulien, President of Dulien Steel Products, Inc., personally at Los Angeles in said District on the 4th day of August, 1947.

ROBERT E. CLARK,  
U. S. Marshal.

By /s/ C. W. ROSS,  
Deputy.

[Endorsed]: Filed August 25, 1947. [45]

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[Title of District Court and Cause.]

MOTIONS BY DEFENDANT CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES (1) TO DISMISS THE ACTION, AND (2) FOR A MORE DEFINITE STATEMENT OR FOR A BILL OF PARTICULARS

Plaintiff having filed a complaint consisting of three separately stated causes of action, of which the first is directed solely to the defendants Dulien Steel Products, Inc., of California, and Dulien Steel Products (hereinafter referred to as Dulien); the second solely to the defendant Citizens National Trust & Savings Bank of Los Angeles, and the third solely to defendant Matson Navigation Company (hereinafter referred to as Matson), defendant Citizens National Trust & Savings Bank of Los



Angeles (hereinafter referred to as the Bank) moves the court as follows:

Motion to Dismiss for a Failure to State a Claim

I. For an order dismissing the action upon the ground that the complaint fails to state a claim against defendant Bank upon which relief can be granted. [46]

\* \* \*

COSGROVE, CLAYTON,  
CRAMER & DIETHER,

JOHN N. CRAMER,

L. A. DIETHER,

By /s/ JOHN N. CRAMER,  
Attorneys for Defendant Citizens National Trust  
& Savings Bank of Los Angeles.

[Endorsed]: Filed August 15, 1947. [49]

[Title of District Court and Cause.]

## ANSWER

Comes Now the defendant Dulien Steel Products, Inc., of California, a corporation, and Dulien Steel Products, Inc., a corporation, and severing from its co-defendant answers the complaint on file herein as follows:

### I.

The defendant having no information or belief upon the subject mentioned in paragraph one in first cause of action of plaintiff's complaint sufficient to enable him to answer any of [52] the allegations therein contained, and placing his denial on that ground, denies each and every allegation set forth therein.

### II.

Admits the allegation contained in subparagraph (a) of paragraph two. Denies each and every allegation contained in subparagraphs (b), (c), and (d) on the grounds that this defendant has no information or belief upon the subject mentioned with which to enable him to form a belief as to the truth of any of said allegations, and therefore denies said allegations on those grounds.

### III.

Answering paragraph three of the complaint herein, defendant Dulien Steel Products, Inc., of California admits that it is responsible for the sale of the products referred to in the complaint.

IV.

Defendant Dulien Steel Products, Inc., of California denies specifically each and every allegation contained in paragraph four of the complaint with the exception that it admits having entered into a contract to sell to the plaintiff certain barbed wire as more particularly described in defendant's sale order #LA-712, dated July 12, and set forth in more detail in Exhibit A attached to plaintiff's complaint.

V.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph five of the complaint except that the plaintiff agreed to pay defendant for said wire the sum of \$288,900.00.

VI.

Defendant Dulien Steel Products, Inc., admits the allegations contained in paragraph six of the complaint.

VII.

Defendant Dulien Steel Products, Inc., admits the [53] allegations contained in lines 3 to 17, inclusive, of paragraph seven of the complaint; however, due to lack of knowledge and sufficient information with which to form a belief as to the truth of the allegations contained in paragraph seven from line 18 to line 32, and placing his denial on that ground, defendant denies said allegations.

VIII.

Defendant Dulien Steel Products, Inc., denies

that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in paragraph eight of plaintiff's complaint, and placing his denial on that ground denies each and every allegation contained therein.

IX.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph nine of the complaint.

X.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph ten of the complaint.

XI.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph eleven of the complaint.

XII.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph twelve of the complaint.

XIII.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph thirteen of the complaint.

XIV.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph fourteen of the complaint.



XV.

Defendant Dulien Steel Products, Inc., [54] denies each and every allegation contained in paragraph fifteen of the complaint.

XVI.

Defendant Dulien Steel Products, Inc., denies each and every allegation contained in paragraph sixteen of the complaint, and particularly denies that the plaintiff has been damaged in the sum of \$197,552.66 or in any amount or at all.

Second and Third Causes of Action

For the purpose of pleading to the second and third causes of action which are not alleged in the complaint against this defendant, a general denial is hereby made to each and every allegation contained in said second and third causes of action.

Wherefore, defendant, Dulien Steel Products, Inc., prays that plaintiff takes nothing by its complaint and that it be hence dismissed with its costs.

/s/ JOSEPH H. DASTEEL,  
Attorney for Defendant.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed August 22, 1947. [55]

At a stated term, to wit: The September Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 29th day of September, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,  
District Judge.

[Title of Cause.]

MINUTE ORDER—SEPT. 29, 1947

For hearing motion of defendant Citizens Nat'l Trust & Savings Bank of L. A. to dismiss the action and for a more definite statement or for a Bill of Particulars, pursuant to notice thereof filed Aug. 15, 1947; Thos. S. Bunn, Esq., present for plaintiff; John N. Cramer, Esq., present for Cit. Nat'l Tr. & Sav. Bank.

Attorney Cramer argues in support of said motion to dismiss and Court denies said motion.

Attorney Cramer now argues in support of motion for a Bill of Particulars, and Court denies said motion as to Items 1, 2, 3, 4, 5, 6, 7, 8, and 10, and grants said motion as to Items 9 and 11, and orders that defendant bank have 20 days from today to serve written interrogatories; that plaintiff shall have 30 days thereafter in which to reply to said written interrogatories as well as to respond to the order for Bill of Particulars in the items hereto-

fore indicated, and that after the service upon the defendant bank of the replies to the written interrogatories, and the Bill of Particulars, the defendant bank shall have 30 days in which to answer or otherwise plead.

Counsel waive all notices. [57]

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[Title of District Court and Cause.]

### PLAINTIFF'S BILL OF PARTICULARS

(Furnished Pursuant to Defendant Bank's Motion)

The above - entitled Court having heretofore granted the motion of defendant Citizens National Trust and Savings Bank of Los Angeles for an order directing plaintiff to make his complaint herein more definite and certain in respect to Items Nos. 9 and 11 of said motion, plaintiff furnishes this Bill of Particulars in compliance with said order, and alleges:

1. (In reply to defendant bank's Item No. 9.) That the financial loss which resulted to the plaintiff from the bank's negligence in paying for wire without obtaining the prescribed documentary evidence of its proper quantity and condition, to wit, the prescribed clean, order bill of lading, is the same financial loss as that also occasioned by the seller's (Dulien's) breach [83] of warranty as to the good condition and agreed quantity of said wire; but that this same financial loss, in addition to constituting the basis for plaintiff's claim against defendant

bank, alleged in his Second Cause of Action, also constitutes the basis for plaintiff's separate and distinct claim against defendant Dulien for breach of warranty, alleged in his First Cause of Action.

2. (In reply to defendant bank's Item No. 11.) That the first inspection by plaintiff or his agents of any of the wire in question was made by plaintiff himself on Wednesday, July 31st, 1946, at the dock of Moore-McCormack Steamship Lines, Inc., at Terminal Island, California, to which dock a portion of the wire had at an earlier hour on that same day been moved by truck pursuant to order given by Mattoon & Company, the independent shipping agents mentioned in paragraph VII of plaintiff's First Cause of Action on page 5, line 29, of the Complaint. That plaintiff did not then know that defendant bank had not received from defendant Dulien the clean order bill of lading which plaintiff had directed defendant bank to demand and receive.

/s/ THOMAS S. BUNN,  
Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed December 30, 1947. [84]



[Title of District Court and Cause.]

ANSWER OF DEFENDANT CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES

The First Cause of Action in the Complaint herein being directed solely to the defendants Dulien Steel Products, Inc., of California, and Dulien Steel Products (in said complaint and hereinafter collectively called Dulien), and the Third Cause of Action being directed solely to defendant Matson Navigation Company (in said complaint and hereinafter called Matson), defendant Citizens National Trust & Savings Bank of Los Angeles (in said complaint and hereinafter called the Bank), files this its answer to the Second alleged Cause of Action in said Complaint directed to it, and answers the same as amplified by plaintiff's Bill of Particulars filed herein December 30, 1947, by admitting, denying and alleging as follows: [86]

First Defense

The Complaint fails to state a claim against defendant Bank upon which relief can be granted.

Second Defense

1. Answering the allegations of paragraph I of the First Cause of Action (incorporated by reference in paragraph I of the Second Cause of Action), defendant Bank admits that plaintiff is a citizen of and resides in the Republic of Colombia, South

America; admits that it is a national banking association organized, created and existing under the laws of the United States of America, and that it has its principal place of business in the City of Los Angeles, County of Los Angeles, State of California. Defendant Bank alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegation in said paragraph that plaintiff has no place of business in the United States of America.

2. Answering the allegations of paragraph II of the First Cause of Action (incorporated by reference in the Second Cause of Action by paragraph I thereof), defendant Bank admits the allegation of subparagraph (a) of said paragraph II that at all times in said Complaint mentioned defendant Dulien Steel Products, Inc., of California was and now is a corporation organized and existing under the laws of the State of California, and admits the allegations of subparagraphs (b) and (c) of said paragraph II. Defendant Bank alleges that it is without knowledge or information sufficient to form a belief as to the truth of the other allegations of said paragraph II.

3. Answering the allegations of paragraphs III, IV and V of the First Cause of Action (incorporated by reference in the Second Cause of Action by paragraph I thereof), defendant Bank alleges that it is without knowledge or information sufficient to [87] form a belief as to the truth of the allegations contained in said paragraphs.

4. Answering the allegations of paragraph VI of the First Cause of Action (incorporated by reference in the Second Cause of Action by paragraph I thereof), defendant Bank admits that on July 12, 1946, a written sale order dated July 12, 1946, in the form annexed to said Complaint and marked Exhibit A, was duly signed by defendant Dulien and approved and accepted in writing by plaintiff. Admits that thereafter on July 26, 1946, defendant Dulien orally represented to plaintiff that the shipment of wire would be only 2,300 tons, of which defendant Dulien would retain for itself 300 tons, to which change in quantity plaintiff orally agreed, and thereupon in that manner by said mutual agreement between plaintiff and defendant Dulien the quantity of plaintiff's said purchase was reduced to 2,000 tons. Defendant Bank is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph.

5. Answering the allegations of paragraph VII of the First Cause of Action (incorporated by reference in the Second Cause of Action by paragraph I thereof), defendant Bank admits that said steamship was docked on July 26, 1946, at pier A, at Long Beach, California, Harbor, instead of the Los Angeles Harbor; admits and alleges that on July 27, 1946, plaintiff made a written application to defendant for a letter of credit for \$214,000, on the Bank's usual form for such application, which application was partly printed and partly typewritten;



that a true copy of plaintiff's said application for said letter of credit is annexed to the Complaint and marked "Exhibit 'B' (Face)"; that as a part of the same transaction plaintiff signed and delivered to said Bank an instrument in writing, known commercially as a Letter of Credit Guarantee; that a true copy of said Letter of Credit Guarantee (complete except for plaintiff's signature and the date) is [88] annexed to the Complaint marked "Exhibit 'B' (Back)"; that as a part of the same transaction defendant Bank loaned to plaintiff, at his special instance and request, the sum of \$54,535, and plaintiff orally agreed with defendant Bank to give it a lien upon said wire and to evidence said loan and said lien by a note in writing which plaintiff thereafter did, as more fully appears from the counterclaim hereof; that thereupon defendant Bank made and executed its irrevocable Letter of Credit in the amount of \$214,000, and delivered the same to plaintiff; that a true copy of said Letter of Credit is annexed to the Complaint and marked "Exhibit C"; that the provision in said Application for said Letter of Credit (Exhibit B (Face) to the Complaint) and in said Letter of Credit (Exhibit C to the Complaint) providing that a negotiable or order bill of lading be presented endorsed in blank, was inserted in said Application and said Letter of Credit, at the instance and request of defendant Bank, and not at the instance or request of plaintiff, and said provision was inserted in each of said documents for the sole benefit of defendant Bank as a lienholder on said wire. Defendant Bank fur-



ther alleges that thereafter and on July 29, 1946, defendant Bank released plaintiff from the provisions of said Application for Letter of Credit and of said Letter of Credit providing that a negotiable or order bill of lading should be presented, and plaintiff orally agreed with defendant Bank that a straight or non-negotiable bill of lading might be accepted.

Further answering said paragraph VII, defendant Bank admits that on July 27, 1946, and concurrently with the purchase of said Letter of Credit, plaintiff orally instructed the Bank that upon the Bank's receipt of the documents, it should notify plaintiff's Los Angeles shipping agent, Mattoon & Co., Inc., to ship said wire pursuant to plaintiff's instructions to South America. In this connection defendant Bank denies the allegations of paragraph 2 of said Bill of Particulars that said Mattoon & Co., Inc., was [89] "independent shipping agents." Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph that plaintiff's application for and purchase and receipt of said Letter of Credit was before plaintiff had seen any of said wire.

Defendant Bank denies generally and specifically all the other allegations of paragraph VII.

6. Answering the allegations of paragraph II of the Second Cause of Action, defendant alleges that it has no knowledge or information sufficient to form a belief as to the truth of the allegations of

said paragraph that the payment by the Bank therein alleged took place before plaintiff had seen any of said wire or before any of said wire had been unloaded from the ship. Admits that on July 29, 1946, defendant Bank paid to defendant Dulien the full purchase price for 2,000 tons of wire in the sum of \$214,000. Denies generally and specifically all the other allegations of said paragraph II.

7. Answering the allegations of paragraph III of said Second Cause of Action, defendant admits that with the full knowledge and written consent of defendant Bank and defendant Dulien plaintiff sold 25 tons of said wire at a price of \$65.00 per ton; admits that 104 tons of said wire was with the written consent of defendants Dulien and the Bank sold at \$4.50 per ton. Defendant alleges that it is without knowledge or information sufficient to form a belief as to the other allegations of the second unnumbered subparagraph of said paragraph.

In this connection, defendant alleges that plaintiff for a valuable consideration in writing agreed with defendant Bank that defendant Bank should not be responsible for the character, quality, quantity, condition or value of the property represented by the documents or for any difference in character, quality, quantity, condition or value of the property from that expressed in [90] the documents, all as appears in paragraph 9 of the Letter of Credit Guarantee, Exhibit B (Back) to the Complaint.

8. Answering the allegations of paragraph IV of the Second Cause of Action, as supplemented by

paragraph 1 of said Bill of Particulars, defendant denies that each and all, or each or all, or any of the special expenses in said paragraph pleaded constitute additional or any loss and damage or any loss or damage as a direct and proximate result or as a direct or proximate result, or any result of the alleged negligence of defendant Bank in the alleged failure to follow plaintiff's instructions and the terms of said Letter of Credit, either as alleged in paragraph II of plaintiff's Second Cause of Action or otherwise or at all. Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph IV.

Answering paragraph 1 of said Bill of Particulars, defendant Bank denies that any financial loss whatever resulted to the plaintiff from defendant Bank's alleged negligence in paying Dulien said \$214,000 without obtaining the alleged prescribed documentary evidence, to wit, the alleged prescribed clean order bill of lading.

9. Answering the allegations of paragraph V of the Second Cause of Action, defendant Bank alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph V.

10. Answering the allegations of paragraph VI of the Second Cause of Action, defendant Bank alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph VI.



11. Answering the allegations of paragraph VII of the Second Cause of Action, defendant Bank admits that when plaintiff purchased said Letter of Credit from it on July 27, 1946, plaintiff [91] told said Bank and said Bank knew that plaintiff's purpose in purchasing the wire for payment of which said Letter of Credit was to be used, was to ship said wire to South America for resale. Defendant Bank denies generally and specifically all the other allegations of paragraph VII.

12. Answering the allegations of paragraph VIII of said Second Cause of Action, defendant Bank admits that plaintiff remained in California, away from his own country, for three months. Defendant Bank alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph that plaintiff remained away from his business for three months; that the cost to plaintiff of such stay was \$3,000, and that within that time he expended that sum in living expenses. Defendant Bank denies generally and specifically all the other allegations of said paragraph.

13. Answering the allegations of paragraph IX of said Second Cause of Action, in addition to the matters admitted in paragraph 7 of this Answer, defendant Bank admits that it gave written consents that approximately 1,750 additional tons of said wire might be sold, under an agreement that such consent would be without prejudice to any prior existing rights of either of the parties against



the other. Defendant Bank denies generally and specifically each, all, and every of the allegations of paragraph IX not hereinabove expressly admitted.

14. Answering the allegations of paragraph X of said Second Cause of Action, defendant Bank denies generally and specifically each, all and every of the allegations of said paragraph X.

15. Answering the allegations of paragraph XI of said Second Cause of Action, defendant Bank admits that a part of the purchase price of said \$214,000 Letter of Credit was represented by a loan of \$54,000 made to plaintiff by defendant Bank by its [92] Loan Department, which it was orally agreed between said Bank and plaintiff on the date said Letter of Credit was purchased, to wit, July 27, 1946, could be represented by plaintiff's promissory note to be thereafter executed; admits that plaintiff also agreed to pay the Bank its usual charge of \$535 for such Letter of Credit and for the Bank's service in making payment thereunder; admits that on July 31, 1946, plaintiff signed and delivered to the Bank his promissory note dated July 31, 1946, prepared by the Bank and payable to the Bank, for \$54,535, covering the principal amount of said loan of \$54,000 and the Bank's charge of \$535 for the Bank's said Letter of Credit and the Bank's services; admits that on July 31, 1946, defendant Bank represented that it had paid Dulien's draft for \$214,000 against said Letter of Credit; alleges in this connection that said representation was in all respects true. Defendant Bank

alleges that on July 27, 1946, plaintiff and said defendant Bank in writing agreed that said Bank might accept as bills of lading under said Letter of Credit any documents issued or purporting to be issued by or on behalf of any carrier which acknowledged receipt of property for transportation, whatever the specific provisions of said documents, all as more particularly appears from the provisions of paragraph 6 of said Letter of Credit Guarantee, "Exhibit 'B' (Back)" to the Complaint. Thereafter on July 29, 1946, plaintiff and defendant Bank orally agreed one with the other that the bill of lading referred to in said Letter of Credit and in said Letter of Credit Guarantee might show a consignment from defendant Dulien to defendant Dulien. Defendant Bank admits that plaintiff believed and relied on the representations of defendant Bank, which are hereinabove admitted to have been made; denies generally and specifically all of the other allegations of paragraph XI not hereinabove expressly admitted.

16. Answering the allegations of paragraph XII of said [93] Second Cause of Action, defendant Bank admits that it now holds plaintiff's said promissory note of July 31, 1946, originally for \$54,535; admits that plaintiff is entitled to credit of principal cash payments of \$39,925.90; denies generally and specifically all the other allegations of paragraph XII of said Second Cause of Action. In this connection, defendant Bank alleges that the principal balance due on said note is \$14,609.10,

together with interest at the rate of 5% per annum as follows:

On \$39,694.05 from December 2, 1946, to December 5, 1946;

On \$34,594.05 from December 5, 1946, to December 16, 1946;

On \$29,579.05 from December 16, 1946, to February 10, 1947;

On \$27,333.83 from February 10, 1947, to April 2, 1947;

On \$19,879.37 from April 2, 1947, to May 16, 1947;

On \$19,411.37 from May 16, 1947, to May 27, 1947;

On \$14,609.10 from May 27, 1947, until paid.

### Third Defense

1. On July 27, 1946, as a part of the transaction for the purchase of said Letter of Credit, plaintiff made, signed and delivered to said defendant Bank a certain agreement in writing, known commercially as a Letter of Credit Guarantee. In said Letter of Credit Guarantee, plaintiff is referred to as "we" and defendant Bank is referred to as "you." In paragraph 9 thereof it is provided in part as follows:

"In furtherance and extension and not in limitation of the specific provisions hereinbefore set forth, we agree that any action taken by you or by any correspondent of yours under or in connection with the Credit or the relative drafts, documents or property, if taken in good



faith, shall be binding on us and shall not put you or [94] your correspondent under any resulting liability to us; and we make like agreement as to any inaction or omission, unless in breach of good faith."

A true copy of said Letter of Credit Guarantee (except for signature and date) is annexed to the Complaint, marked "Exhibit 'B' (Back)."

2. Each and all of the actions of said defendant Bank, of which complaint is made, were taken in good faith by said defendant Bank. Each and all of said defendant Bank's inactions and omissions, if any there be, were unintentional on its part, and the result of inadvertence and mistake on the part of one of its employees. None of said alleged inactions or omissions was in breach of good faith.

#### Fourth Defense and by Way of Setoff

1. Defendant Bank is informed and believes, and upon and according to such information and belief alleges, that solely as a result of the payment by it to defendant Dulien of the sum of \$214,000, as alleged in said Complaint, plaintiff obtained possession of, and title to, goods and property, to wit: barbed wire, of great value, to wit, of a value the exact amount of which is to defendant Bank unknown.

Defendant Bank is further informed and believes, and therefore alleges, that plaintiff sold all, or substantially all, of said barbed wire, for large sums of money, to wit, for sums the exact amount of



which is to defendant Bank unknown. Defendant Bank alleges that even if it be otherwise liable on account of the matters set forth in said Complaint, its liability in no event is greater than the excess, if any there be, of (1) the sum of \$214,000 over (2) the larger of the following sums, namely, the actual amount received by plaintiff from the sale of said barbed [95] wire or the fair market value thereof, and defendant Bank claims the amount for which said barbed wire was actually sold, or the fair market value thereof, whichever sum is the larger, as a setoff against any claim of liability of plaintiff against it.

### Counterclaim

1. July 31, 1946, plaintiff for valuable consideration to him in hand paid by defendant, made, executed and delivered to, with and in favor of defendant Bank, his promissory note in words and figures as follows, to wit:

“\$54,535.00. Los Angeles, California, July 31, 1946.  
No. 64114.

“Thirty days after date, for value received, the undersigned promise(s) to pay to the order of the Citizens National Trust & Savings Bank of Los Angeles, at its office in the City of Los Angeles, California, the sum of Fifty-four Thousand Five Hundred Thirty-five and no/100 Dollars with interest at the rate of 5 per cent per annum from date until paid, interest payable at maturity, and if not punctually paid, it shall become a part of the prin-

cipal, and thereafter bear the same rate of interest as the principal debt; and should the interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable and may be charged to the account in said Bank of either the principal maker, or sureties on said note, at the option of said Bank.

“Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this Note, the undersigned agree(s) to pay a reasonable sum additional as attorney’s fees; also costs of such suit. Principal and interest payable in lawful money of the United States.

“The undersigned hereby deposit(s) with said Bank as collateral security for the payment of this or any other liability or liabilities of the undersigned to said Bank, due or to become [96] due, or that may be hereafter contracted, the following property, viz.:

“2,000 Tons Barbed Wire held at Matson Navigation Company Freight Docks

“the market value of which is now \$....., together with all cash dividends, stock dividends, liquidating dividends, stock rights, rights to subscribe, new securities, or other property to which the undersigned is or may hereafter become entitled to receive on account of such property, with this condition, viz.:

“The said Citizens National Trust & Savings Bank of Los Angeles, its successors or assigns, are hereby authorized to cause to be transferred to its

own name or to the name of any other person or corporation as pledgee or trustee or otherwise any certificates of stock, warehouse receipts or other instruments or securities which are now or may hereafter be deposited with it by the undersigned as security as aforesaid, and such transferee may exercise all of the rights and privileges in connection with said securities to which said transferee may be entitled by virtue of being the holder of record thereof in addition to the rights and privileges otherwise granted to said Bank hereunder, but said Bank or said transferee shall not be obliged to exercise any of said rights or privileges.

“All provisions of law, in equity and by statute providing for, relating to, or pertaining to pledges and the sale of pledged property, or which prescribe, prohibit, limit or restrict the right to, or conditions, notice or manner of sale, together with all limitations of law in equity or by statute on the right of attachment in the case of secured obligations, are hereby expressly waived by the undersigned.

“That the Citizens National Trust & Savings Bank of Los Angeles, its successors or assigns, has the right to call for such [97] additional security as it may deem proper, and on failure to respond forthwith to such call, this obligation shall immediately thereupon become due and payable; and on the non-performance of this promise, or on the non-payment of any liability or liabilities above mentioned, the said Bank, through its President or Cashier or other officer, its successors or assigns, is and are hereby



given full power and authority to sell, assign and deliver, or collect the whole or any part of the above named securities, or any substitute therefor, or any addition thereto, at public or private sale, at any time or times hereafter, without any demand, advertisement or notice—such demand, advertisement and notice being hereby expressly waived; and upon such sale the said Citizens National Trust & Savings Bank of Los Angeles, its successors or assigns, may become the purchaser of the whole or any part of such securities, discharged from any right of redemption, and after deducting all legal or other costs and expenses for collection, sale and delivery, may apply the residue of the proceeds of such collections, sale or sales, to pay any, either or all of said liabilities as said Citizens National Trust & Savings Bank of Los Angeles, its successors or assigns, shall deem proper, and in such order of application as it, or its successors or assigns, may elect, returning the overplus to the undersigned. And the undersigned agrees to pay the holder hereof any deficiency upon demand.

“Should this note be signed by more than one person, and/or firm, and/or corporation, all covenants and obligations herein contained shall be considered for all purposes as joint and several covenants and obligations of each signer hereof.

“J. B. LONDONO.

“Address: 408 S. Spring, Rm 305, L.A.”

2. Said note was given as a part of the purchase price of the Letter of Credit in plaintiff's complaint herein mentioned. [98]



3. No part of the principal sum owing on said note has been paid except the sum of \$39,925.90 and there is now due, owing and unpaid from plaintiff to defendant Citizens National Trust & Savings Bank of Los Angeles the principal sum of \$14,609.10, together with interest at the rate of 5% per annum as follows:

On \$39,694.05 from December 2, 1946, to December 5, 1946;

On \$34,594.05 from December 5, 1946, to December 16, 1946;

On \$29,579.05 from December 16, 1946, to February 10, 1947;

On \$27,333.83 from February 10, 1947, to April 2, 1947;

On \$19,879.37 from April 2, 1947, to May 16 1947;

On \$19,411.37 from May 16, 1947, to May 27, 1947;

On \$14,609.10 from May 27, 1947, until paid.

4. Defendant bank has been compelled to retain attorneys to enforce this counterclaim and collect said note, and for that purpose has retained the firm of Cosgrove, Clayton, Cramer & Diether and has incurred an obligation to said attorneys to pay them a reasonable attorneys' fee.

Wherefore, defendant Citizens National Trust & Savings Bank of Los Angeles prays that plaintiff take nothing by his complaint and that defendant Citizens National Trust & Savings Bank of Los Angeles do have and recover judgment against plain-

tiff upon its counterclaim in the amount of \$14,609.10, together with interest thereon at the rate of 5% per anum upon diminishing balances as hereinabove set forth, together with its costs and disbursements herein expended and its reasonable attorneys' fees incurred in prosecuting said counterclaim and for such other and further relief as to the court may seem meet in the premises.

COSGROVE, CLAYTON,  
CRAMER & DIETHER,

JOHN N. CRAMER,

LEONARD A. DIETHER,

By /s/ JOHN N. CRAMER,  
Attorneys for Defendant, Citizens National Trust &  
Savings Bank of Los Angeles.

Receipt of copy acknowledged.

[Endorsed]: Filed January 28, 1948. [99]

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[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO COUNTERCLAIM  
OF DEFENDANT CITIZENS NATIONAL  
TRUST & SAVINGS BANK OF LOS AN-  
GELES

Comes Now the plaintiff and by way of reply to the counterclaim of defendant Citizens National Trust & Savings Bank of Los Angeles, hereinafter called the "Bank," admits, denies and alleges as follows:

## I.

Replying to paragraphs 1 and 2 of said counterclaim plaintiff admits that on July 31, 1946, he made, executed and delivered to the bank his promissory note in the words and figures set forth in said counterclaim and that said note was given as part of the purchase price of the letter of credit mentioned in the complaint and a copy of which is attached to the complaint marked Exhibit "C"; but replying to paragraph 3 of the counterclaim [101] plaintiff denies that only \$39,925.90 has been paid upon the principal thereof and alleges that \$888.55 which the bank on its books has credited to interest should have been credited to principal, and that with due allowance thereof upon principal there has been paid upon the principal of said note the sum of \$40,814.45; and replying to paragraph 4 of the counterclaim plaintiff denies the implied allegation therein contained that by reason of failure of plaintiff to perform his obligations the bank has been compelled to retain attorneys to enforce said counterclaim or collect said note; and as further defenses to said counterclaim and to said note plaintiff alleges as follows:

## First Defense

Plaintiff alleges that said note was made, executed and delivered by plaintiff to the bank without consideration.

## Second Defense

Plaintiff alleges that the consideration, if any, for said note failed by reason of the following facts:



The consideration for which said note was given was (1) the written promise of the bank, as contained in the letter of credit, copy of which is attached to the complaint herein and is marked Exhibit "C" and in the application therefor, a copy of which is likewise attached to the complaint and marked Exhibit "B," that the bank would pay to defendant Dulien \$54,000.00 of the proceeds of said note, along with \$160,000.00 of additional funds furnished to the bank by plaintiff, upon the receipt by the bank from defendant Dulien of Dulien's sight drafts accompanied by a full set of clean on board ocean bills of lading made out to order, endorsed in blank and marked freight prepaid, and by commercial invoices evidencing shipment of 2,000 tons of barbed wire in one shipment, invoiced on basis of c.i.f. Los Angeles Harbor, to be shipped from Honolulu, Hawaii, to Los Angeles Harbor, and would apply the remaining \$535.00 of the proceeds of said note to the payment of the bank's [102] charge for handling the letter of credit transaction, and (2) the bank's representation made to plaintiff on July 31, 1946, simultaneously with plaintiff's execution and delivery of said note, that the bank had received the required bills of lading and had paid defendant Dulien's drafts for \$214,000.00 against said letter of credit; and two days prior to the date of the execution and delivery of said note by plaintiff to the bank the consideration therefor had already fully failed, although plaintiff did not then know it, in that the bank had on July 29, 1946, paid to defendant Dulien



said sum of \$54,000.00 plus said additional \$160,000.00 without having received from defendant Dulien any bill of lading whatever, and the barbed wire which was thereafter delivered and made available to plaintiff in consideration of such payment by the bank to Dulien was badly rusted and unmerchantable and inferior in all respects to that which plaintiff had ordered and agreed to pay Dulien for, as set forth in sale order, copy of which is attached to the complaint marked Exhibit "A"; and plaintiff's loss on account of the bank's said violation of plaintiff's said instructions and the bank's said agreement exceeded by a substantial amount, to wit, by more than \$100,000.00, the total sum claimed by defendant bank on its counterclaim—all as is more fully set forth and alleged in plaintiff's second cause of action in the complaint herein and in the plaintiff's answers to defendant bank's interrogatories on file herein.

### Third Defense

Plaintiff alleges that there has been paid to and received by the bank upon said note the total sum of \$40,814.45; that by reason of the fact that the consideration for said note failed, as is above alleged in plaintiff's second defense, no interest whatever accrued or will accrue upon said note and therefore the total sum of all payments made upon said note, to wit: [103] the sum of \$40,814.45, constitutes a reduction of the amount of the principal thereof; and that for the same reason, to wit: the failure of consideration for said note, plaintiff is also entitled

to credit upon said note in the amount of the bank's said service charge of \$535.00; and that full allowance for said credits to which plaintiff is so entitled leaves now unpaid upon said note only the sum of \$13,185.55 principal, with which said sum defendant bank is entitled to be credited upon the full amount of plaintiff's claim as said claim is set forth in the complaint, but only in the event of the allowance of plaintiff's said claim in full as so alleged in the complaint.

#### Fourth Defense

Plaintiff alleges that the necessity for the bank's retention of attorneys to enforce its alleged counterclaim and to collect the promissory note upon which said counterclaim is based was occasioned, if at all, solely by the negligence of the bank in its failure to comply with plaintiff's instructions in said letter of credit and application therefor, as above alleged, and that no sum whatsoever is due or owing to the bank, or is or will be properly allowable by this Court to the bank, on account of attorneys' fees.

Wherefore, plaintiff prays that the defendant Citizens National Trust & Savings Bank of Los Angeles take nothing by its said counterclaim, and that plaintiff have judgment against said defendant bank as prayed for in the complaint.

Dated: February 18, 1948.

/s/ THOMAS S. BUNN,  
Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed February 19, 1948. [104].

[Title of District Court and Cause.]

### SUBSTITUTION OF ATTORNEYS

We hereby substitute and appoint Brobeck, Phleger & Harrison as our attorneys in the above-entitled action in the place and stead of James M. Carter, United States Attorney, and Bernard B. Laven, [106] Assistant United States Attorney.

Dated: July 14, 1948.

Matson Navigation Company,

By /s/ [Indistinguishable],

Secretary;

Defendant.

We hereby agree to the foregoing substitution.

Dated July 19, 1948.

/s/ JAMES M. CARTER,

/s/ BERNARD B. LAVEN.

We agree to accept the foregoing substitution.

Dated July 14, 1948.

BROBECK, PHLEGER &  
HARRISON,

By /s/ MOSES LASKY.

[Endorsed]: Filed July 20, 1948. [107]



[Title of District Court and Cause.]

ANSWER OF DEFENDANT MATSON  
NAVIGATION COMPANY

Defendant Matson Navigation Company (hereinafter sometimes referred to as "this defendant"), answers plaintiff's Complaint as follows: [108]

\* \* \*

VIII.

This defendant admits the allegations contained in paragraph II of plaintiff's second alleged cause of action as incorporated in paragraph I of plaintiff's third alleged cause of action.

IX.

Answering the allegations contained in [111] paragraph III of plaintiff's second alleged cause of action as incorporated in paragraph I of plaintiff's third alleged cause of action, this defendant denies that the entire lot of barbed wire unloaded from said SS White Squall was badly rusted and/or unmerchantable but admits that some of said wire was rusted, the exact amount being unknown to this defendant, and in that behalf alleges that said rusting occurred prior to shipment aboard the said SS White Squall, and that at all times mentioned in the complaint and at all pertinent times the condition of all of said wire was well and truly known to defendant Dulien (as said term "defendant Dulien" is defined in paragraph II of plaintiff's first alleged cause of action, and which



said term is at all times hereinafter used as so defined);

\* \* \*

### X.

Answering the allegations contained in paragraph II of plaintiff's third alleged cause of action, [112] this defendant \* \* \* admits that plaintiff does not have and never has had said bill of lading or any copy thereof; \* \* \* admits that said bill of lading was what is in the shipping business known as a straight clean bill of lading showing on its face that defendant Dulien was both the shipper and the consignee, and that said wire had been received from the shipper (Dulien) in apparent good order and condition except as therein otherwise noted and that there were no exceptions noted on said bill of lading. [113]

\* \* \*

### XI.

Answering the allegations contained in paragraph III of plaintiff's third alleged cause of action, this defendant admits that said bill of lading consisted of a printed form into which there had been typed certain information applicable to this particular shipment, showing, among other things, name of shipper, name of ship, name of consignee and quantity of wire delivered to the carrier; admits that thereafter a freight bill upon a printed form was issued by this defendant containing in type-writing certain information copied from said bill of lading, and that said freight bill did not contain any exceptions or notations of exceptions to the

“good order and condition” of said wire, and in that behalf alleges that this defendant, either acting for itself or as agent for said United States of America, was under no obligation by law, custom or otherwise to indicate on said freight bill the condition of this shipment or of any shipment carried by it; admits that the copy of the freight bill attached to the complaint, marked “Exhibit D,” is a true copy of said freight bill; admits that when defendant Dulien presented to defendant Bank Dulien’s drafts for \$214,000 drawn against the plaintiff’s letter of credit, said drafts were accompanied by the said freight bill instead of a clean order bill of lading specified in and required by plaintiff’s instructions to defendant Bank and by the terms of said letter of credit, and that said defendant Bank carelessly and negligently [114] mistook said freight bill for the required bill of lading and paid said \$214,000 to defendant Dulien thereon; [115]

\* \* \*

### Sixth Defense

#### I.

The bill of lading actually issued for the shipment described in said complaint, which said bill of lading is annexed hereto as “Exhibit B,” and made a part hereof, showed on its face that it was a straight bill of lading, that is, a bill of lading wherein the shipper and consignee were the same party, and wherein the shipment was not to the order of the shipper but was non-negotiable; by

reason thereof, this defendant, either individually, or as the agent for the United States of America, was under no duty by statute, rule of law, or otherwise to indicate thereon the condition or quality of the shipment carried on said vessel.

\* \* \*

### Eighth Defense

#### I.

Even if this defendant, either individually or as agent for the United States of America, issued a false [117] bill of lading, as alleged by the plaintiff in paragraph III of plaintiff's third alleged cause of action, this defendant alleges that at no time, in connection with any of the transactions mentioned in the complaint, did said plaintiff rely in any manner whatsoever upon the statements or any statement contained in said bill of lading, and in fact said plaintiff in said complaint admits that he has never seen or had possession of said bill of lading, or even of a copy thereof, and as a consequence there could have been no reliance by said plaintiff upon any of the terms of said bill of [118] lading.

\* \* \*

### Tenth Defense

#### I.

The contract of carriage for the shipment described in the complaint represented by the bill of lading, attached hereto and marked "Exhibit B," was one between this defendant as agent for the United States of America and defendant Dulien, which said contract was for the carriage of the ship-



ment therein described from Honolulu to Los Angeles; said contract between this defendant, as such agent, and Dulien was fully performed and completed by this defendant prior to the assignment, if any, or purported assignment of said bill of lading to the plaintiff, and by reason thereof, plaintiff did not acquire and could not acquire any rights whatsoever against this defendant, either individually or as agent of the United States of America, and in that behalf this defendant further alleges that by issuing at Dulien's request, a straight bill of lading wherein the shipper and the consignee were the same party, this defendant had no reason, and by the exercise of reasonable care could have no reason, to believe that defendant Dulien could or would attempt to assign or negotiate said bill of lading to any third party. [119]

\* \* \*

## Twelfth Defense

### I.

Even if all of the matters alleged in the complaint against this defendant are true, it appears from the face of the complaint that the plaintiff could not have suffered any loss without the negligence of defendant Bank in failing to obtain from defendant Dulien the documents called for by the application for commercial letter of credit, annexed to the complaint as "Exhibit B," and by the letter of credit, annexed to the complaint as "Exhibit C."

Wherefore, this defendants prays that plaintiff



take nothing by his complaint herein, and that this defendant be hence dismissed with its cost of suit.

BROBECK, PHLEGER &  
HARRISON,

MORROW & TRIPPET,

By /s/ T. H. MORROW,

Attorneys for Defendant Matson Navigation Company.

[Endorsed]: Filed September 15, 1948. [120]

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[Title of District Court and Cause.]

CROSS-COMPLAINT OF CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES

Comes Now the defendant, Citizens National Trust & Savings Bank of Los Angeles (hereinafter called the Bank) and for a [141] cross-claim against plaintiff, J. B. Londono, and against defendants, Dulien Steel Products, Inc., of California, a corporation; Dulien Steel Products, Inc., a corporation; Matson Navigation Company, a corporation, et al., by leave of court first had and obtained, files this, its cross-complaint and alleges:

1. In the first cause of action in the complaint herein, plaintiff and cross-defendant, J. B. Londono (hereinafter called plaintiff), made a claim against defendants, Dulien Steel Products, Inc., of

California, a corporation, and Dulien Steel Products, Inc., a corporation, hereinafter referred to jointly and severally as Dulien, and prayed for judgment against said defendant in the sum of \$197,552.66 plus interest. For the particulars thereof reference is made to the First Cause of Action in said complaint contained.

2. In the Second Cause of Action of said complaint, plaintiff made a claim against defendant and cross-complainant, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, and prayed for judgment against said defendant in the sum of \$184,367.11 plus interest. For the particulars thereof reference is made to said Second Cause of Action.

3. In the Third Cause of Action in said complaint, plaintiff made a claim against defendant, Matson Navigation Company, a corporation, and prayed for judgment against said defendant in the sum of \$131,552.66 plus interest. For the particulars thereof reference is made to said Third Cause of Action.

4. On or about July 26, 1948, plaintiff and cross-defendant herein filed a libel in personam in admiralty against United States of America, United States Maritime Commission and War Shipping Administration, hereinafter referred to as respondents, entitled J. B. Londono, Libellant, v. United States of America, et al., Respondents, and numbered 8482 P.H. in the files of this court,

in which and whereby plaintiff and cross-defendant herein [142] as libelant therein, sought judgment for damages against said respondents in the sum of \$131,552.66 plus interest. By order of this court, said libel in personam has been consolidated with this action. The libel in personam charges the respondents as principals for the acts alleged to have been done in said Third Cause of Action by defendant and cross-complainant, Matson Navigation Company, as agent. For further particulars, reference is made to said libel in personam.

5. As appears from an inspection of the complaint herein and of said libel in personam, plaintiff in seeking damages against defendant Dulien for alleged breach of warranty in the sale of certain barbed wire, and is seeking damages against defendant, Matson Navigation Company, and respondents in said libel in personam, for the issuance of an alleged false bill of lading covering said barbed wire. Plaintiff's claim against defendant Bank is for the alleged disobedience by said Bank in paying defendant Dulien for said wire without first having obtained a clean order bill of lading covering said wire. If plaintiff has any cause of action against defendants, Dulien and Matson Navigation Company (hereinafter referred to as other defendants), and said respondents, or any one or more of them, such cause of action exists in plaintiff because, and only because, plaintiff became the owner of said barbed wire by reason of the said payment by defendant Bank.

6. If plaintiff shall recover judgment against



the other defendants and said respondents, or any one or more of them, and if plaintiff shall also recover judgment against Bank, then to the extent that Bank shall satisfy said judgment against it, said Bank will be entitled to be subrogated to the rights of plaintiff against each of the other defendants and said respondents, and any moneys paid by the other defendants and said respondents, or any one or more of them, on account of any judgment which may be rendered in plaintiff's favor against said other defendants and said [143] respondents, or any one or more of them, if paid before satisfaction by Bank of any judgment plaintiff may recover against it, should, after deducting plaintiff's court costs, be deducted from any judgment against Bank; and if paid after Bank shall have satisfied any judgment against it, the amount of such payments, after deducting plaintiff's court costs, should be held by plaintiff as trustee for, and paid over to, Bank and any payment made by Bank on account of any judgment recovered by plaintiff against it should not be credited against, or used to satisfy, wholly or partially any judgment against said other defendants, or any one or more of them.

Wherefore, defendant and cross-complainant, Citizens National Trust & Savings Bank of Los Angeles, prays the court that in the event, but only in the event, plaintiff herein shall recover judgment against it and also shall recover judgment against defendants, Dulien and Matson Navi-



gation Company, and the respondents in said libel in personam, United States of America, United States Maritime Commission, and War Shipping Administration, or any one or more of them, it shall be declared and adjudged by this court:

1. That any moneys collected by plaintiff on account of any judgments against said other defendants and said respondents, or any one or more of them, if paid before payment by Bank on account of any judgment against it, be applied, after first deducting plaintiff's court costs in the partial or total satisfaction of any judgment against Bank;

2. That any moneys collected by plaintiff on account of any judgments against said other defendants and said respondents, or any one or more of them, if paid after the satisfaction by said Bank of any judgment against it, shall, after deducting plaintiff's court costs, be held by plaintiff as trustee for, and be paid to, Bank, that Bank subrogated to plaintiff's rights [144] in the premises, and that no payments made by defendant Bank on account of any judgment recovered by plaintiff against it, shall be credited against or used to satisfy wholly or partially any judgment against said other defendants, or any one or more of them; and

3. For such other and further relief as to the

court may seem just and equitable, the premiss considered.

COSGROVE, CLAYTON,  
CRAMER & DIETHER,

By /s/ JOHN N. CRAMER,  
Attorneys for Defendant and Cross-Complainant,  
Citizens National Trust & Savings Bank of  
Los Angeles.

[Endorsed]: Filed February 14, 1949. [145]

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[Title of District Court and Cause.]

### STIPULATION AND ORDER

It Is Hereby Stipulated by and between defendant and cross-complainant, Citizens National Trust & Savings Bank of Los Angeles, [146] and defendant and cross-defendant, Dulien Steel Products, Inc., of California, a corporation, and defendant and cross-defendant, Dulien Steel Products, Inc., a corporation, by and through their respective counsel, that the allegations of the cross-complaint filed herein by said defendant and cross-complainant shall be deemed denied so far as said defendants and cross-defendants and each of them are concerned and that said defendants and cross-defendants, and each of them, need not file a formal answer to said cross-complaint.

It Is Further Stipulated that this stipulation may be made a part of the judgment roll herein.

Dated February 16th, 1949.

/s/ JOSEPH H. DASTEEL,  
Attorney for Defendants and  
Cross-Defendants.

COSGROVE, CLAYTON,  
CRAMER & DIETHER,

By /s/ LEONARD A. DIETHER,  
Attorneys for Defendant and  
Cross-Complainant.

### ORDER

It Is So Ordered. 2/18/49.

PEIRSON M. HALL,  
Judge of the District Court.

[Endorsed]: Filed February 18, 1949. [147]

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[Title of District Court and Cause.]

### STIPULATION AND ORDER

It Is Hereby Stipulated by and between J. B. Londono, plaintiff and cross-defendant herein, and the Citizens National [150] Trust & Savings Bank of Los Angeles, cross-complainant, that the allegations of the cross-complaint heretofore filed herein by said Bank against J. B. Londono, plaintiff and cross-defendant, and Dulien Steel Products, Inc., of California, Dulien Steel Products, Inc., and

Matson Navigation Company, defendants and cross-defendants, shall be deemed denied by plaintiff and cross-defendant J. B. Londono, and that plaintiff and cross-defendant J. B. Londono need not file a formal answer to said cross-complaint.

It Is Further Stipulated that this stipulation may be made a part of the judgment roll herein.

Dated March 7th, 1949.

/s/ THOMAS S. BUNN,  
Attorney for J. B. Londono, Plaintiff and Cross-Defendant.

COSGROVE, CLAYTON,  
CRAMER & DIETHER,

By /s/ LEONARD A. DIETHER,  
Attorneys for Defendant and Cross-Complainant  
Citizens National Trust & Savings Bank of Los Angeles.

#### ORDER

It Is So Ordered. 3/11/49.

/s/ PEIRSON M. HALL,  
Judge.

[Endorsed]: Filed March 14, 1949. [151]



[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF DEFENDANT  
CITIZENS NATIONAL TRUST & SAV-  
INGS BANK OF LOS ANGELES

Comes now the defendant Citizens National Trust & Saving Bank of Los Angeles and, leave of Court being first had and obtained, files this its amendment to its answer and admits, denies and alleges as follows:

1. Paragraph 7 of the second defense of said answer (page 5, line 18, to page 6, line 2), is hereby stricken in its entirety and in lieu thereof the following new paragraph 7 is hereby substituted:

7. Answering the allegations of paragraph III of said Second Cause of Action, defendant admits that on September 27, 1946, with the full knowledge and written consent of defendant Bank and defendant Dulien, plaintiff [159] sold 25 tons of said wire at a price of \$65.00 per ton; admits that on April 25, 1947, 104 tons of said wire was, with the written consent of defendants Dulien and the Bank, sold at \$4.50 per ton. Defendant alleges that it is without knowledge or information sufficient to form a belief as to the other allegations of the second unnumbered subparagraph of said paragraph.

In this connection, defendant alleges that plaintiff for a valuable consideration in writing agreed with defendant Bank that defendant Bank should not be responsible for the charac-

ter, quality, quantity, condition or value of the property represented by the documents or for any difference in character, quality, quantity, condition or value of the property from that expressed in the documents, all as appears in paragraph 9 of the Letter of Credit Guarantee, Exhibit B (back) to the Complaint.

2. Paragraph 13 of said second defense of said answer (page 7, lines 16 to 24, both inclusive), is hereby stricken in its entirety and in lieu thereof the following new paragraph 13 is hereby substituted:

13. Answering the allegations of paragraph IX of said Second Cause of Action, defendant Bank admits that on September 18, 1946, it gave a written consent that plaintiff should negotiate for the sale of approximately 1,000 tons of said wire without prejudice to the prior existing rights of any of the parties against the other. A true copy of said written consent is annexed hereto, marked Exhibit "A," and made a part hereof as if fully set out at length in the body of this answer. Defendant Bank alleges that the 25 tons and the 104 tons of said wire mentioned in paragraph III of the Second Cause of [160] Action of said complaint and referred to in paragraph 7 of the answer, as amended, were parts of said quantity of approximately 1,000 tons. Defendant Bank denies generally and specifically each, all and every

of the allegations of paragraph IX not hereinabove expressly admitted.

3. A new defense entitled "Fifth Separate and Complete Defense" is hereby added to said answer following the Fourth Defense at page 11, line 5, as follows:

#### Fifth Separate and Complete Defense

1. Defendant Bank refers to and incorporates by reference the admissions and denials of paragraphs 7 and 13 of its answer as amended, and makes such allegations and denials a part of this Fifth Separate and Complete Defense as if repeated at length herein.

2. If the payment by defendant Bank to Dulien of the sum of \$214,000 alleged in paragraph II of said Second Cause of Action were in disregard and violation of the terms of said letter of credit and the instructions given defendant Bank by plaintiff and in plaintiff's application therefor, as further alleged in said paragraph II, then plaintiff knew or ought to have known such alleged disregard and violation on or about July 29, 1946. Thereafter, and on or about July 31, 1946, plaintiff, with full knowledge of the quality and condition of the barbed wire, referred to in, and as alleged in, said complaint, accepted said wire and thereafter and prior to September 18, 1946, appropriated a portion of the same, to wit: more than 500 tons thereof, to his own use as owner thereof. At the time plaintiff accepted



said wire and at the time he appropriated said portion thereof to his own use as hereinabove alleged, [161] there was no agreement between him and defendant Bank that his said acceptance and appropriation should be without prejudice to any existing rights of either plaintiff or defendant Bank against the other, or any other agreement of like tenor or effect. Plaintiff so accepted and appropriated said wire as the owner thereof because and only because, as he then well knew, the act of defendant Bank in paying to defendant Dulien the said sum of \$214,000 had caused title to said wire to pass to plaintiff.

3. Defendant Bank alleges that by reason of the foregoing facts plaintiff was and is estopped to assert or claim the damages alleged in the complaint against defendant Bank by reason of the alleged fact that defendant Bank paid out said sum of \$214,000 to defendant Dulien in disregard or violation of said letter of credit or the instructions given by plaintiff to defendant Bank, and defendant Bank prays the judgment of this Court whether plaintiff, having accepted said wire and appropriated to his own use portions thereof as owner thereof, ought to be allowed to claim or assert that defendant Bank, by making the very payment which enabled him successfully to assert ownership to said portions of said wire, is liable for damages to plaintiff as alleged in said complaint.

Wherefore, defendant Bank prays judgment as



in its answer and in its cross-complaint herein set forth.

COSGROVE, CRAMER,  
DIETHER & RINDGE,

By /s/ JOHN N. CRAMER,

Attorneys for Defendant Citizens National Trust  
& Savings Bank of Los Angeles. [162]

EXHIBIT A

(Letterhead)

Thomas S. Bunn

Dulien Steel Products, Inc.,  
11611 South Alameda,  
Los Angeles, California;

Matson Navigation Company,  
523 West Sixth Street,  
Los Angeles, California;

Citizens National Trust & Savings Bank,  
457 South Spring Street,  
Los Angeles 13, California.

Gentlemen:

This letter will confirm the understanding reached yesterday between Dulien Steel Products, Inc., J. B. Londono, Matson Navigation Company and the Citizens National Trust and Savings Bank of Los Angeles, that, adverse and conflicting claims exist among the undersigned growing out of the purchase, sale, shipment, delivery, condition and ownership of barbed wire shipped by Dulien to Los Angeles, of which approximately 1,000 tons now remain on the dock at Pier A in Long Beach; that Londono, acting in the interest of all the undersigned, shall

forthwith negotiate for the sale of said approximately 1,000 tons of said barbed wire, but shall actually sell the same only with the written approval of each of the undersigned as to prices, terms and conditions of sale; that the net proceeds of such sale or sales shall be first paid to Londono and applied by him to the extent necessary upon his indebtedness to the undersigned bank; and that this agreement and such sale shall be wholly without prejudice to the rights, claims, denials, and defenses of each of the undersigned against the others or any of them in respect to said adverse and conflicting claims.

Very truly yours,

/s/ THOMAS S. BUNN,

Attorney for J. B. Londono.

CITIZENS NAT'L TRUST &  
SAVINGS BANK,

By /s/ H. D. IVEY,

Pres.

Approved and Agreed to:

DULIEN STEEL PRODUCTS  
INC.,

By /s/ E. S. GRENSTEIN.

US MARITIME COMMISSION,  
MATSON NAVIGATION COM-  
PANY,

Berth Agents;

By /s/ J. B. BANNING, JR.

Receipt of copy acknowledged.

[Endorsed]: Filed January 16, 1950. [164]

[Title of District Court and Cause.]

## CROSS-COMPLAINT OF MATSON NAVIGATION COMPANY

Defendant and cross-defendant Matson Navigation Company (hereinafter called Matson), for a cross-claim against defendants and cross-defendants Dulien Steel Products, Inc., of California, a corporation, and Dulien Steel Products, Inc., a corporation, by stipulation of counsel and by leave of court first had and obtained, files this its cross-complaint and alleges as follows:

1. In the third alleged cause of action set forth in the Complaint of the plaintiff herein, the said plaintiff purports to assert a claim against Matson based upon the alleged issuance by Matson of an allegedly false bill of lading; reference is hereby made to said third alleged cause of action for the particulars and details thereof.

2. The shipment of barbed wire referred to in plaintiff's Complaint was made by defendant Dulien (as said term "defendant Dulien" is defined in paragraph II of plaintiff's first alleged cause of action and which said term is at all times hereinafter used as so defined), through one Lacy Hofius, who at all pertinent times was acting as the duly authorized agent of Dulien. Said Dulien and said Hofius, at the time that the latter caused the shipment of said wire to be made, both knew the actual condition and quality of all of said wire and also knew the amount thereof. Neither said Dulien nor



said Hofius at any time disclosed to Matson the actual condition and/or quality of said wire. Said Hofius personally prepared the bills of lading for said wire issued by Matson in its capacity as agent for the United States of America as such capacity is more particularly described in Matson's Answer herein, reference to which is hereby made. Said bills of lading including the bill of lading referred [174] to in plaintiff's Complaint and Matson's Answer, were presented by said Hofius to Matson's agent in Honolulu, Castle & Cooke, Ltd., completely filled out in all respects except for the amount of the freight charges which were thereupon inserted by said Castle & Cooke, Ltd., and thereafter said bills of lading were signed by one R. Arciero, an employee of said Castle & Cooke, Ltd., on behalf of Matson as agent for the master of the vessel and handed to said Hofius. At the time that said bill of lading was so executed and delivered to said Hofius, no officer, agent or employee of Matson had actually seen said wire or had an opportunity to check the quantities inserted therein by said Hofius.

3. By reason of the foregoing, if the plaintiff herein should recover a judgment against Matson, it is entitled to be reimbursed by Dulien for any amounts which it is compelled to pay to the plaintiff in satisfaction thereof.

Wherefore, defendant, cross-defendant and cross-complainant Matson Navigation Company prays judgment that, in the event that plaintiff herein shall recover judgment against it and it shall be



compelled to pay any amounts to the plaintiff in satisfaction thereof, it may recover same from defendant and cross-defendant Dulien and that it may have such other and further relief as to the court may seem just and proper in the premises.

BROBECK, PHLEGER &  
HARRISON,

MORROW & TRIPPET,

By /s/ JOHN C. MORROW,

Attorneys for Defendant, Cross-Defendant and  
Cross-Complainant Matson Navigation Com-  
pany.

Receipt of copy acknowledged.

[Endorsed]: Filed February 13, 1950. [175]

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[Title of District Court and Cause.]

STIPULATION WAIVING ANSWER TO  
CROSS-COMPLAINT OF MATSON NAVI-  
GATION COMPANY

It Is Hereby Stipulated by and between defend-  
ant and cross-complainant Matson Navigation Com-  
pany and defendants and cross-defendants Dulien  
Steel Products, Inc., of California and Dulien Steel  
Products, Inc., that no Answer to the Cross-Com-  
plaint of Matson Navigation Company need be  
served or filed, and that each and all of the allega-

tions of said Cross-Complaint may be deemed denied by said cross-defendants and each of them.

Dated February 13, 1950.

BROBECK, PHLEGER &  
HARRISON,

MORROW & TRIPPET,

By /s/ JOHN C. MORROW,  
Attorneys for Defendant and Cross-Complainant  
Matson Navigation Company.

/s/ JOSEPH H. DASTEEL,  
Attorney for Defendants and Cross-Defendants  
Dulien Steel Products, Inc., of California and  
Dulien Steel Products, Inc.

[Endorsed]: Filed February 13, 1950. [178]

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[Title of District Court and Cause.]

PRETRIAL MEMORANDUM OF DEFENDANT,  
DULIEN STEEL PRODUCTS, INC., OF  
CALIFORNIA

Comes Now the Defendant, Dulien Steel Products, Inc., in [179] the Above Numbered Action and Files This His Pretrial Statement of Issues, Together With Authorities as Follows:

I.

Plaintiff Alleges That the Barbed Wire Sold by Defendant Was Purchased by Sample, This Is Not

True, on the Contrary, the Evidence Will Show That the Plaintiff in Writing (See Exhibit "A" of Plaintiff's Complaint) Bargained With the Defendant Dulien Steel Products, Inc., for the Purchase of "Unused Government Surplus Barbed Wire, as Purchased by Seller, Dulien Steel Products, Inc., from Interior Department (U. S.).

The Evidence Will Show Further That This Is Exactly What the Plaintiff Received. [180]

\* \* \*

List of Witnesses and Exhibits to Be Offered in Evidence by Defendant Dulien Steel Products, Inc.

It is obvious that defendant cannot be certain List of Witnesses and Exhibits to Be Offered in the trial until plaintiff has rested. It is self-evident that in any litigation the plaintiff in advance of trial is better prepared than any defendant to state what evidence will be offered. However, it is now the best judgment of defendant, Dulien Steel Products, Inc., that the following exhibits will be offered on its behalf and the following witnesses will be called: [182]

\* \* \*

Exhibits:

\* \* \*

Bill of Lading dated July 2, 1946, issued by Matson Navigation Company and consigned to Dulien Steel Products, of California.

\* \* \*

Letter of Credit dated July 27, 1946, issued by Citizens Bank to Dulien Steel Products, Inc.

Invoice of Dulien Steel Products, Inc., dated July 29, 1946, showing sale of 2000 tons of barbed wire to J. B. Londono.

Cashier's check of Citizens Bank dated July 29, 1946, payable to Dulien Steel Products, Inc.

\* \* \*

Letter of July 29, 1946, from Dulien Steel Products, Inc., [183] to Mattoon & Co.

\* \* \*

Letter of August 28, 1946, from L. P. Stanley, Dulien Steel Products, Inc., to Matson Navigation Company.

\* \* \*

Letter dated September 10, 1946, and signed by Bank on September 18, 1946, signed by Dulien Steel Products, [184] Inc., Matson Navigation Company and Citizens Bank.

JOSEPH H. DASTEEL,

/s/ JOSEPH H. DASTEEL,

Joseph H Dasteel, Attorney for Dulien Steel Products, Inc., of California, a Corporation, and Dulien Steel Products, Inc., a Corporation, Defendants.

[Endorsed]: Filed February 13, 1950. [185]



[Title of District Court and Cause.]

PRE-TRIAL STATEMENT AND POINTS AND  
AUTHORITIES OF PLAINTIFF AND  
LIBELANT J. B. LONDONO

Statement of Facts

Plaintiff and libelant, hereinafter called "Londono," agreed to purchase from defendant Dulien, and Dulien agreed to sell to him, 2700 tons (but later by admitted agreement reduced to 2000 tons), of barbed wire at \$107.00 per ton, or a total of \$214,000.00. The sale order referred to the wire as "unused Government surplus barbed wire, as purchased by seller from Interior Department"; but [186] the sale was made upon actual samples of good wire free from rust and upon Dulien's representations that said wire belonged to Dulien and was then in transit from Honolulu on the Matson steamship White Squall, and that it was good wire in all respects equal in quality to said samples.

\* \* \*

The wire delivered to Londono by defendant Matson was 81 tons short and was obviously so badly rusted that none of it was worth the Los Angeles market price for wire such as was warranted. [187]

\* \* \*

Londono in his first cause of action sues Dulien for damages for breach of warranty; in his second cause of action he sues the bank for damages for unauthorized payment of the \$214,000.00 without ob-

taining the required clean order bill of lading; and in his third cause of action he sues Matson for damages for negligence in issuing and putting into circulation to Londono's detriment a false bill of lading, and a freight bill which enabled the bank to mistake it for a bill of lading and thereby make the mistake of unauthorized payment; and in the Admiralty suit he sues the United States, the War Shipping Administration and the United States Maritime Commission for the same liability, as principals, as Matson had as agent, i.e. for the tort of issuance of a false bill of lading.

\* \* \*

#### Issues

##### I.

#### (Against Dulien)

Dulien is liable to Londono for false representations and breach of warranty as to the quantity, quality and condition of the wire. [189]

\* \* \*

#### Points and Authorities

##### I.

#### (Dulien)

#### Remedies for Breach of Warranty:

Sec. 1789. "(1) Where there is a breach of warranty by the seller, the buyer may, at his election: [191]

"(b) (Damages) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

“(6) (Measure of damages.) The measure of damages for breach of warranty is the loss directly and naturally resulting in the ordinary course of events from the breach of warranty.

“(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.”

Sec. 1790. “Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.” [192]

\* \* \*

V.

(Matson and United States)

The Carrier Was Under a Duty to Cause the Bill of Lading to Correctly Show “the Apparent Order and Condition of the Goods.”

While this duty had existed at common law it was specifically declared:

1. By Harter Act (February 13, 1893) 46 U.S.C.A. Sec. 193;
2. By Federal Bill of Lading Act (August 29, 1916) 49 U.S.C.A. Sec. 102, p. 409; and

3. By Carriage of Goods by Sea Act (April 16, 1936) 46 U.S.C.A. Sec. 1303(3)(c), p. 850,

and by the provisions of 46 U.S.C.A. 1303(4), the latter did not repeal or limit the application of 49 U.S.C.A. Sec. 102; and for a failure to perform that duty the carrier is liable to (a) the owner of the goods covered by a straight bill \* \* \* (Londono in this case because upon the bank's unauthorized payment he perforce became the owner thereof although against his will), or (b) the holder of [195] an order bill, who has given value in good faith, relying upon the description therein of the goods for damages caused by \* \* \* their failure to correspond with the description thereof in the bill at the time of the issue. (49 U.S.C.A. 102). [196]

\* \* \*

Dated February 13, 1950.

Respectfully submitted,

/s/ THOMAS S. BUNN,

Attorney for J. B. Londono,  
Plaintiff and Libelant.

[Endorsed]: Filed February 13, 1950. [203]



[Title of District Court and Cause.]

SECOND AMENDMENT TO ANSWER OF DEFENDANT CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES

Comes now the defendant, Citizens National Trust & Savings Bank of Los Angeles, and leave of Court being first had and obtained, files this its Second Amendment to its Answer, and alleges:

Sixth Separate and Complete Defense

1. On July 20, 1946, a bill of lading, designated L.A. 29, dated July 12, 1946, covering the shipment of wire mentioned in Paragraph VI of the First Cause of Action in the Complaint herein, incorporated in plaintiff's Second Cause of Action by Paragraph I thereof, was issued to defendant Dulien. Said bill of [216] lading was not for 2,000 tons of barbed wire, the amount of barbed wire mentioned in the modification agreement between plaintiff and defendant Dulien, as alleged in said Paragraph VI, and as admitted in Paragraph 4 of the second defense of defendant's said answer, but on the contrary, was for 4,599,948 pounds of barbed wire, or approximately 2,300 tons. In said bill of lading defendant Dulien was both the consignor and the consignee and it was not an order bill of lading. Said bill of lading, on or before July 25, 1946, was delivered to defendant Dulien.

2. On July 27, 1946, the day on which plaintiff executed his application for a commercial letter of credit (Exhibit B to the Complaint herein) and defendant bank accepted said application, as alleged in Paragraph VII of the First Cause of Action of said Complaint, incorporated in plaintiff's Second Cause of Action by Paragraph I thereof, a condition in the contract between plaintiff and defendant bank created by said application for commercial letter of credit, and said bank's acceptance thereof, to wit: that the drafts should be accompanied by a full set of clean ocean bills of lading made out to order endorsed in blank, freight prepaid, evidencing shipment of 2,000 tons of barbed wire, was impossible of performance, and at all times thereafter remained impossible of performance. A condition in said letter of credit (Exhibit C to the Complaint) to wit: that the drafts must be accompanied by a full set clean on board ocean bills of lading made out to order, blank endorsed, marked freight prepaid, evidencing shipment of 2,000 tons of barbed wire, was impossible of performance, and at all times thereafter remained impossible of performance. Each of said conditions was and is void and of no force or effect; but said contract between plaintiff and defendant bank, excepting only as to said void condition, remained in full force and effect.

Wherefore, defendant prays judgment as in its

answer [217] and in its cross-complaint herein set forth.

COSGROVE, CRAMER,  
DIETHER & RINDGE,

By /s/ JOHN N. CRAMER,  
Attorneys for Defendant Citizens National Trust &  
Savings Bank of Los Angeles.

[Endorsed]: Filed April 18, 1950. [218]

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[Title of District Court and Cause.]

MOTION TO DISMISS AND  
FOR NON-SUIT

Come Now the defendant Dulien Steel Products, Inc., of California, a corporation, and the defendant Dulien Steel Products, Inc., a corporation, by their attorney, Joseph H. Dasteel, Esq., and move the court that the plaintiff's complaint herein be dismissed, and that a judgment of non-suit be granted, upon the following grounds, to wit:

1. That the evidence introduced by plaintiff is insufficient to support the allegations contained in the complaint, for the following reasons and in the following particulars:

A. That the plaintiff's attempt to introduce parol evidence to alter or change the terms of the written contract is inadmissible.

B. That the plaintiff's attempt to show a sale by sample falls because the language in the written



contract is inappropriate to express a warranty of quality by sample or otherwise.

C. That the plaintiff received exactly what he bargained for, both as to quality and quantity.

D. That the plaintiff accepted delivery and took control of the specified goods. [220]

\* \* \*

Dated May 8, 1950.

Respectfully submitted,

/s/ JOSEPH H. DASTEEL,  
Attorney for Defendant Dulien Steel Products Co.,  
Inc.

[Endorsed]: Filed May 23, 1950. [228]

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[Title of District Court and Cause.]

NOTICE OF MOTION FOR ORDER PER-  
MITTING DEFENDANT DULIEN STEEL  
PRODUCTS, INC., OF CALIFORNIA, A  
CORPORATION, AND DEFENDANT  
DULIEN STEEL PRODUCTS, INC., A COR-  
PORATION, TO FILE CROSS-COMPLAINT  
AGAINST MATSON NAVIGATION COM-  
PANY, A CORPORATION

To: Thomas S. Bunn, Esq., Attorney for Plaintiff.

To: Messrs. Morrow & Trippet, Attorneys for De-  
fendant Matson Navigation Company.

You and Each of You Will Please Take Notice  
that the defendants Dulien Steel Products, Inc., of  
California, a corporation, and Dulien Steel Products,



Inc., a corporation, will move [229] the above-entitled court, in the court room of the Honorable Peirson Hall, District Judge, in the Federal Courts and Post Office Building, Los Angeles, California, on Wednesday, May 24, 1950, at the hour of 10:00 a.m. of said day, or as soon thereafter as counsel can be heard, for an order granting them leave to file a cross-complaint against the defendant Matson Navigation Company, a copy of which proposed cross-complaint and affidavit are annexed hereto.

Said motion will be made upon the ground that evidence has been introduced in the trial regarding negligent acts on the part of the defendant, Matson Navigation Company, that were unknown to defendants Dulien prior to the time of the trial of this action, and therefore this motion is made on the further ground that the defendants Dulien herein may amend their pleadings and file supplemental pleadings in the form of a cross-complaint, as provided by Rules 15(b) and 15(c) of Federal Jurisdiction and Procedure.

\* \* \*

Wherefore, defendants Dulien ask that the court make said order.

Dated May 23, 1950.

/s/ JOSEPH H. DASTEEL,  
Attorney for Defendants Dulien Steel Products,  
Inc., of California and Dulien Steel Products,  
Inc. [230]

[Title of District Court and Cause.]

AFFIDAVIT OF JOSEPH H. DASTEEL  
State of California,  
County of Los Angeles—ss.

Joseph H. Dasteel, being first duly sworn, deposes and says: That he is an attorney at law, duly admitted to practice in all of the courts of this state, and resides in the county and state aforesaid; that he is the attorney of record for the defendants, Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., in the above-entitled action. [231]

\* \* \*

That the said acts of the said Matson Navigation Company contributed and were the proximate cause of plaintiff's action against the defendants Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc. as set forth in the third cause of action in plaintiff's complaint on page 13, Paragraph IV, wherein it is alleged that the defendants Dulien and Matson Navigation Company caused said [232] wire to be unloaded onto the dock without segregation as to quality.

\* \* \*

/s/ JOSEPH H. DASTEEL.

Subscribed and sworn to before me this 23rd day of May, 1950.

[Seal] /s/ HELEN E. VAN BRUNT,  
Notary Public in and for the County of Los Angeles,  
State of California.

My commission expires Aug. 17, 1952. [233]

[Title of District Court and Cause.]

CROSS-COMPLAINT OF DULIEN STEEL  
PRODUCTS, INC., OF CALIFORNIA AND  
DULIEN STEEL PRODUCTS, INC.

Come Now the defendants Dulien Steel Products, Inc., of California, a corporation, and Dulien Steel Products, Inc., a corporation, hereinafter called "Dulien," and for cross-complaint against the defendant Matson Navigation Company, a corporation, and by leave of court first had and obtained, file this, their cross-complaint, and allege:

I.

In the first cause of action in the complaint herein, [234] plaintiff made a claim against defendants, Dulien Steel Products, Inc., of California, a corporation, and Dulien Steel Products, Inc., a corporation, hereinafter referred to jointly and severally as Dulien, and prayed for judgment against said defendant in the sum of \$197,552.66 plus interest. For the particulars thereof reference is made to the First Cause of Action in said complaint contained.

\* \* \*

IV.

That the plaintiff is seeking damages against defendants Dulien for alleged breach of warranty in the sale of certain barbed wire and is also seeking damages against the defendant Matson Navigation



Company for the issuance of an alleged false bill of lading covering said barbed wire.

V.

That the evidence introduced in this case developed the [235] fact that the defendant Matson Navigation Company contracted to ship two lots of barbed wire for the defendants Dulien on the steamship "White Squall" which was loaded in Honolulu and contained the two shipments of barbed wire on two separate bills of lading, one being No. LA-22 and marked "Notify Gonzales and Blanco" and the other being bill of lading No. LA-29, a straight bill of lading marked "consigned by shipper to shipper," that regardless of the fact that there were two bills of lading and separate shipments of barbed wire for each bill of lading, that the said Matson Navigation Company loaded all of the wire aboard ship and mixed same up without any segregation as to the two different bills of lading, making it difficult to segregate the same upon arrival at destination, namely, Long Beach, California. [236]

\* \* \*

Wherefore, defendants and cross-complainants Dulien pray judgment that in the event plaintiff herein shall recover judgment against them and in the event cross-complainants Dulien shall be compelled to pay any amounts to the plaintiff in satisfaction thereof that the defendants and cross-complainants Dulien recover same from the cross-defendant Matson Navigation Company, and that



they may have such other and further relief as to the court may seem just and proper in the premises.

/s/ JOSEPH H. DASTEEL,  
Attorney for Defendants and Cross-Complainants  
Dulien Steel Products, Inc., of California and  
Dulien Steel Products, Inc.

[Endorsed]: Filed May 24, 1950. [237]

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[Title of District Court and Cause.]

MOTION TO STRIKE TESTIMONY OF  
PLAINTIFF'S WITNESSES

Come Now the defendants, Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., and move the court that all of the parol and other testimony and evidence offered by plaintiff's witnesses referring to or tending to change the terms of the written sales contract, namely, Plaintiff's Exhibits No. 2 and 2a, also referred to as "Defendant Dulien's Sales Order No. LA-712," dated July 12, 1946, be stricken from the record.

Dated: May 24, 1950.

/s/ JOSEPH H. DASTEEL,  
Attorney for Defendants Dulien Steel Products,  
Inc., of California and Dulien Steel Products,  
Inc.

[Endorsed]: Filed May 25, 1950. [238]

[Title of District Court and Cause.]

### AMENDMENT TO COMPLAINT

(To Third Cause of Action Against Defendant,  
Matson Navigation Company)

Leave of Court having been first had and obtained so to do in the course of trial hereof, plaintiff files as of May 26, 1950, this Amendment to the Complaint, to include the following additional paragraph VI as a part of plaintiff's Third Cause of Action, against defendant, Matson Navigation Company, and alleges:

#### Third Cause of Action (Matson)

#### VI.

That for the reasons alleged in paragraphs II and III hereof the representations contained in said bill of lading as [239] to the apparent good order and condition of said barbed wire and as to the quantity thereof were false. That plaintiff is informed and believes and upon that ground alleges that the bank made said \$214,000.00 payment to Dulien without receiving any bill of lading whatever; but that the bank contends that said payment was made upon the delivery to it by Dulien of, and upon the bank's reliance upon, said clean straight bill of lading issued by Matson as above alleged in Paragraph II hereof. Therefore, plaintiff alleges that if the bank did receive such false bill of lading and did pay Dulien in reliance thereon and if this

Court so finds, then by reason of the issuance of such false bill of lading by Matson and the placing of it in circulation in commerce to plaintiff's detriment, and by reason of Matson's failure to deliver to plaintiff barbed wire of the quality and quantity described and set forth in said bill of lading, defendant Matson is further liable to plaintiff jointly and severally with Dulien and the bank for the loss and damage, totaling \$131,552.66, plus interest thereon, claimed by plaintiff in paragraph IV hereof.

Wherefore, plaintiff asks judgment as in the original complaint prayed.

/s/ THOMAS S. BUNN,  
Attorney for Plaintiff.

[Endorsed]: Filed May 31, 1950. [240]

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[Title of District Court and Cause.]

MOTION TO DISMISS PURSUANT TO  
RULE 41(b)

Defendant, Citizens National Trust & Savings Bank of Los Angeles, moves the Court, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, for a judgment of dismissal of this action against said defendant bank upon the merits, upon the ground that plaintiff has shown no right to relief.

The defendant assigns in support of said motion the following:

1. The contract between defendant bank and

plaintiff for letter of credit of \$214,000.00 specifically provides that defendant bank shall not be liable for the damages claimed by plaintiff.

2. The contract between defendant bank and plaintiff for said letter of credit clearly shows that the damages claimed by plaintiff were not in contemplation of the parties.

3. Plaintiff's alleged damage has not been shown to have [241] been proximately caused by any act of defendant bank.

4. All of the damages claimed by plaintiff were caused by the intervening acts of third parties and defendant bank is not responsible therefor.

5. Plaintiff accepted the wire and the documents on which defendant bank paid the letter of credit with full knowledge of the condition of the wire and of the character of said documents, and as a result plaintiff is estopped to claim that defendant bank did not comply with the terms of its contract.

6. Plaintiff did not rely on said letter of credit in purchasing wire from Dulien.

7. Defendant bank is not responsible for damages claimed by plaintiff resulting from his own failure to take advantage of the favorable provisions of his contract with Dulien or as modified on August 5, 1946.

8. Damages claimed by plaintiff are not clearly shown to be ascertainable in both nature and origin

9. At the time said letter of credit was purchased



and at all times thereafter it was impossible for defendant bank to have secured clean, order bill of lading for 2,000 tons of wire shipped from Honolulu to Long Beach.

Dated: June 1, 1950.

COSGROVE, CRAMER,  
DIETHER & RINDGE,

By /s/ LEONARD A. DIETHER,  
Attorneys for Defendant, Citizens National Trust &  
Savings Bank of Los Angeles.

[Endorsed]: Filed June 1, 1950. [242]

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[Title of District Court and Cause.]

## SECOND AMENDMENT TO COMPLAINT

Comes Now the Plaintiff, and leave of Court being first had and obtained, makes the following amendments to the complaint:

### In First Cause of Action

In paragraph II(a) on page 2, line 8, after the word California, inserts the following language:

“\* \* \* and that at all times herein mentioned defendant Dulien Steel Products, Inc., was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington and authorized to do [247] busi-

ness and doing business in the State of California.” [Allowed.]\*

In paragraph VIII, on page 6, line 2, inserts after the word bank, the word “negligently.” [Allowed.]

In paragraph X, on page 7, line 13, after the word county, inserts the words “for export, for domestic use, or for junk.” [Allowed.]

In paragraph XI, on page 7, line 20, after the word county, inserts the words “for export.” [Allowed.]

In paragraph XII, on page 8, line 15, after the word wire, inserts the words “for export.” [Allowed.]

In paragraph XVI, on page 11, line 15, after the word value, inserts the words “for export.” [Allowed.]

#### In Second Cause of Action (Bank)

In paragraph IV, on page 13, line 13, after the word county, inserts the words “for export.” [Allowed.]

In paragraph V, on page 14, line 12, after the word plaintiff, insert the words “for export.” [Allowed.]

In paragraph VII, on page 14, inserts between

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\*[The words allowed and disallowed appearing in brackets in this Second Amendment to Complaint appear in longhand in the margin of the original, initialed H.]

lines 29 and 30, the following new matter: [Allowed.]

“and that plaintiff then had a customer in Colombia, whose name was known to defendant bank, ready, able and willing to pay plaintiff \$160.00 per ton c.i.f. Colombian Port for 1,000 tons of galvanized wire from said shipment”;

In paragraph VII, page 14, line 31, after the word value, at the end of the line, inserts the words “for export.” [Allowed.]

In paragraph X on page 16, lines 4 to 6, revises the language to read as follows:

“and by reason of the delivery to plaintiff of wire other than and different from what plaintiff would have been entitled to under the documents called for by said letter of credit, plaintiff had been damaged.” [Disallowed.]

On page 19 adds new paragraph to said Second Cause of Action (Bank) to be numbered XIII and to read as follows:

### XIII.

“That defendant bank contends and will throughout the trial of this cause contend, that the bank did receive from Dulien when said \$214,000.00 payment was made, a clean straight bill of lading. That plaintiff has above alleged in paragraph II hereof, and here reiterates, that defendant bank did not receive any bill of lading whatever. By reason of the fact that until this cause is determined plaintiff cannot know certainly whether or not the bank did receive such clean straight bill of lading, or any bill

of lading, plaintiff further alleges that even if the bank did receive the clean straight bill of lading which it claims it did receive and did pay thereon, nevertheless such receipt thereof and payment thereon by the bank were in violation of plaintiff's instructions as contained in said letter of credit; and that plaintiff's loss on account of such violation of his said instructions was the same as is set forth in detail in paragraph X hereof." [Allowed.]

And likewise on page 19 adds new paragraph to Second Cause of Action (Bank), to be numbered XIV, and to read as follows:

XIV.

"That the consideration for the \$535.00 service charge made by the defendant bank against plaintiff, and included in the amount of the [249] promissory note for \$54,535.00 given by plaintiff to the bank, failed in that plaintiff's instructions to the bank were not carried out and therefore the service for which said charge was made was not performed." [Allowed.]

/s/ THOMAS S. BUNN,  
Attorney for Plaintiff.

[Endorsed]: Filed June 14, 1950. [250]



[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CROSS-COMPLAINT OF DEFENDANT AND CROSS-CLAIMANT, CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES

\* \* \*

Points and Authorities

II.

The Judgments as Ordered by the Court Give Plaintiff a Double Recovery to the Extent of the Bank's Counterclaim. This Unjust Enrichment of the Plaintiff Can Be Avoided by Subrogating the Bank to Plaintiff's Judgment Against Dulien.

In addition to assessing damages for lost profits in the principal amount of \$76,000 against Dulien the Court assessed additional items of damage of \$105,699.37 (*supra*, page 3, line 10), or a total of \$181,699.37 (*supra*, page 3, line 15). These additional damages of \$105,699.37 equal the same amount as that assessed against the bank before deducting its counter claim in the principal amount of \$14,609.10 (*supra*, page 3, lines 10, 13, and 15).

Plaintiff's note to the bank which was the basis of the bank's counter claim, will be cancelled by the judgment. The plaintiff will thereby have received from the bank a benefit in the principal amount of \$14,609.10, plus interest. If, in addition, plaintiff collects, either from Dulien, or partly from Dulien

and partly from the bank, the amount of \$181,699.37 (supra, page 3, line 15) He Will Have Had a Double Recovery in the Amount of the Bank's Counterclaim, as the following computation shows:

Paid by Dulien alone, or Dulien and	
the bank, the sum of.....	\$181,699.37
Plus cancellation of the bank's note	
in the principal sum of.....	14,609.10
	<hr/>
Makes a total (excluding interest)	
of .....	\$196,308.14

Irrespective of whether Dulien pays the entire judgment against it, or whether the bank pays the judgment against it and Dulien pays the balance, the fact still remains that the plaintiff will not only have the benefit of having his note paid, but will have a judgment equivalent to the amount of said note against Dulien.

We assume that the Court has no intention of permitting plaintiff to make a double recovery of any part of the amount found to be owing to him. Yet such is the result of the judgments ordered by the Court on Friday evening, June 16, 1950. How can this unjust enrichment of the plaintiff be prevented? There are two possible ways:

(a) Defendant and cross-defendant Dulien will probably claim that the judgment against it should be reduced by the amount of the bank's counterclaim. The answer to this is simple. There was no counterclaim in favor of Dulien against London and if there had been, none was pleaded. The Cour

has held that the acts of Dulien have caused principal damages to plaintiff, amounting to \$181,699.37. Why should these be diminished because of the mere fact that Londono owed the bank some money on a note? If Londono had paid the note, there would be no question but that under the decision of the Court Dulien would be liable to Londono in the principal sum of \$181,699.37. Why should the mere fact that Londono failed to pay his note to the bank inure to the benefit of Dulien? Moreover, should the Court grant a new trial as to the bank, or should the judgment against the bank be reversed on appeal, and on such new trial, or as a result of such appeal it is determined that the bank is not liable to Londono, the bank would then be entitled to a judgment against Londono for the amount of its counterclaim. If the Court, in order to prevent a double recovery by the plaintiff, should have reduced the judgment against Dulien by the amount of the bank's counterclaim, then if the judgment against Dulien became final, the present situation would be reversed and the plaintiff would have to pay the bank the amount of its counterclaim and still have the judgment in his favor against Dulien reduced by that amount.

There is another method by which plaintiff will not be unjustly enriched and defendant Dulien will not be allowed a windfall, and this method we urge, namely:

(b) That the Court declare that in the event the judgment against the bank become final,

(1) Out of moneys collected by plaintiff from defendant Dulien plaintiff shall hold an



amount equivalent to the bank's counterclaim (\$14,609.10 plus interest) in trust for the bank;

(2) Or if the plaintiff shall not have collected such moneys from Dulien the bank shall be immediately subrogated to the plaintiff's rights against Dulien in an amount equivalent to said counterclaim.

Under this plan (b) the judgments ordered by the Court would not be changed by reason of the matters herein discussed. Plaintiff would not be unjustly enriched because he would hold the money in an amount equivalent to the bank's counterclaim in trust for the bank.

The situation discussed under this Point II is a condition which confronts the Court and the parties at the present time. It is not hypothetical. The reasons which support our said contention are the same as those which apply to the residue of the judgment for which authorities will be cited in the next succeeding point of this brief (Point III).

\* \* \*

/s/ ALFRED T. MARSHALL.

[Endorsed]: Filed July 5, 1950.

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[Title of District Court and Cause.]

#### SUBSTITUTION OF ATTORNEYS

The defendants, Dulien Steel Products, Inc., of California, a corporation, and Dulien Steel Products, Inc., a corporation, hereby substitute Joseph



H. Dasteel, Esq., and Henry S. Dottenheim, Esq., of 9538 Brighton Way, Beverly Hills, California, as their attorneys in the place and stead of Joseph H. Dasteel, Esq.

Dated June 28, 1950.

DULIEN STEEL PRODUCTS, INC., OF CALIFORNIA, a Corporation.

DULIEN STEEL PRODUCTS, INC., a Corporation.

By /s/ LOUIS KLATZKER,  
Assistant Secretary.

We hereby consent to the substitution as set forth above.

/s/ JOSEPH H. DASTEEL,

/s/ HENRY S. DOTTEHHEIM.

Dated June 28, 1950.

[Endorsed]: Filed July 11, 1950. [251]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This cause coming on regularly for trial the 18th day of April, 1950, before the above-entitled Court, the Honorable Peirson M. Hall, Judge, presiding, in consolidation for trial with Suit in Admiralty No. 8482-PH entitled J. B. Londono, Libelant vs. United States of America, United States Maritime

Commission and War Shipping Administration, Respondents, before the Court without a jury, a jury having been specifically waived by all parties hereto; Thomas S. Bunn, appearing as counsel for Plaintiff and Cross-Defendant, J. B. Londono and for Libelant J. B. Londono; Joseph H. Dasteel, appearing as counsel for Defendants, Cross-Complainants and Cross-Defendants Dulien Steel Product, Inc., of California and Dulien Steel Products, Inc., hereinafter collectively [252] referred to as Dulien, Cosgrove, Cramer, Diether & Rindge, by Leonard A. Diether and Jesse R. O'Malley, appearing as counsel for defendant and cross-complainant Citizens National Trust & Savings Bank of Los Angeles, hereinafter referred to as the Bank; Brobeck, Phleger & Harrison, by Alan W. Aldwell, and Morrow & Trippet, by Hubert T. Morrow, John C. Morrow and Thomas F. Hetherington, appearing as counsel for Defendant and Cross-Complainant Matson Navigation Company, hereinafter referred to as Matson; and Ernest A. Tolin, United States Attorney, by Bernard B. Laven, Assistant United States Attorney, appearing as counsel for Respondents, United States of America, United States Maritime Commission and War Shipping Administration, in consolidated Suit in Admiralty No. 8482-PH; Answers having been filed by all defendants and respondents; Cross-Complaints having been filed by the Bank against plaintiff, Dulien and Matson and by Matson against Dulien, all of said cross-complaints being by stipulation deemed denied by the respective cross-defendants; the Bank's original

Answer having been prior to trial by permission of the Court amended by its First and Second Amendments, and the plaintiff during the course of the trial being permitted to amend his Complaint by his First and Second Amendments thereto, filed herein on May 31, 1950, and June 14, 1950, respectively, and all references herein to the said Complaint and said Answer of the Bank being to said Complaint and said Answer as amended; the trial having continued from day to day to and including June 16, 1950, and oral and documentary evidence having been introduced on behalf of all parties hereto; and the Court having announced its decision from the bench on June 16, 1950, and having directed the preparation of Findings of Fact, Conclusions of Law and Judgment herein; and plaintiff having thereafter on the 21st day of July, 1950, originally submitted proposed Findings of Fact, Conclusions of Law and Judgment, to which written objections were filed by the several defendants, [253] and a three day hearing, upon due notice to all parties, having been held by the Court upon said objections on September 28th, 29th and 30th, 1950, at which hearing all parties were represented; and the plaintiff having thereafter re-submitted Findings of Fact, Conclusions of Law and Judgment, in accordance with direction of the Court at the conclusion of said hearing to which objections were filed and on which objections another duly noticed hearing was held by the Court on November 2nd, 1950, at which hearing all parties were represented; and the Court being fully advised



in the premises, the Court now makes its Findings of Fact as follows, to wit:

### Findings of Fact

#### I.

That at the time of the filing of the complaint and at all times mentioned therein, plaintiff was a citizen of and resided in the Republic of Colombia, South America, and had no place of business in the United States of America. [254]

#### II.

(a) That at all times in the complaint mentioned defendant Dulien Steel Products, Inc., of California, was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and appeared and filed its Answer herein on Aug. 27, 1947, and defendant Dulien Steel Products, Inc., was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington, and doing business in the State of California, and appeared and filed its Answer herein on Aug. 27, 1947, and both said Dulien corporations were at all times during the trial represented by Joseph H. Dasteel. That at all times in the complaint mentioned the names of defendants Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., were used interchangeably by said defendants in the Dulien transactions set forth in the complaint, and they are hereinafter referred to in the singular, as Dulien, unless otherwise herein indicated.



(b) That at all times in the complaint mentioned the defendant Citizens National Trust and Savings Bank of Los Angeles, hereinafter referred to as the Bank, was and now is a National Banking Association, organized and existing under the laws of the United States of America and located and having its principal place of business within the jurisdiction of this Court, to wit, in the City of Los Angeles, County of Los Angeles, State of California, and during all of said times was and now is engaged in the general banking business in Los Angeles, California.

(c) That at all times in the complaint mentioned the defendant Matson Navigation Company, hereinafter referred to as Matson, was and now is a corporation organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City of San Francisco, California, but maintaining also a place of business in the City of Los Angeles.

(d) That at all times during the months of June, July, [255] August and September, 1946, and at all times material to the above-entitled action the S.S. White Squall was a merchant vessel and was owned and operated by the United States of America acting by and through the Administrator, War Shipping Administration, and by his or its successor, the United States Maritime Commission, and at all such times said vessel was assigned by said War Shipping Administration and said United States Maritime Commission to Lykes Bros. Steam-

ship Company as general agent, pursuant to the terms and conditions of the standard War Shipping Administration form of general agency agreement commonly known as G.A.A. 4-4-42 and published in the Federal Register and in Title 46 C.F.R. Cumulative Supplement, page 11427; that said vessel was assigned by the United States of America, acting through said Administrator and said Maritime Commission, to defendant Matson Navigation Company as berth agent under and pursuant to the terms and conditions of the berth agency agreement dated January 1, 1944, a photostatic copy of which was admitted in evidence as "Exhibit 61," for the voyage from Honolulu to Los Angeles-Long Beach which is involved in this action; and at all such times and in all its conduct hereinafter mentioned Matson was acting under and pursuant to said berth agency agreement and solely as berth agent for the United States of America acting by and through the Administrator, War Shipping Administration. Such agency was disclosed and shown on the face and back of bill of lading LA 29 and was also disclosed by the form of said berth agency agreement which was published in the Federal Register. That said berth agency agreement was in full force and effect at all times during the years 1946 and 1947 and at all times material to this action. Matson was not at any such time the owner of or the operating agent for said vessel.

### III.

That on July 11, 1946, at Los Angeles, Dulien,

by E. S. Grinstein, its office manager, orally offered to sell to plaintiff [256] at the price of \$107.00 per ton, f.o.b. steamer Los Angeles, approximately 2700 net tons of unused government surplus barbed wire, sometimes hereinafter referred to as wire, consisting of 1350 tons of galvanized wire and 1350 tons of black wire. That Dulien then, by the said E. S. Grinstein, orally represented to plaintiff that said wire was owned by Dulien and was then in transit from Honolulu, Hawaii, on board the steamship "White Squall" and was due to arrive in the harbor at Los Angeles, on or about July 22, 1946, and then and there exhibited to plaintiff a number of sample rolls of unused good and merchantable black and unused good and merchantable galvanized barbed wire, free from rust, and on the following day, July 12, 1946, exhibited and gave to plaintiff a number of sample cuttings of unused good and merchantable black barbed wire, likewise free from rust, and, for the purpose of inducing plaintiff to make such purchase, expressly warranted on July 11, 1946, by the said E. S. Grinstein and on July 12, 1946, by Louis Dulien, the President of both said Dulien corporations, that the wire so offered and to be sold to plaintiff had been recently seen in Hawaii by Louis Dulien and was like said samples and would be in all respects equal in quality and condition to said exhibited rolls and sample cuttings, Dulien then knowing that said wire was rusty and non-merchantable and that Dulien could not comply with said warranty.



## IV.

That plaintiff after examining said samples of wire and in reliance upon Dulien's said representations and express warranty, accepted said offer on July 12, 1946, and agreed to purchase from Dulien said 700 tons of wire at the rate of \$107.00 per ton, totaling the sum of \$288,900.00 payable upon drafts by Dulien against credits to be established with the bank on or before July 22, 1946. That on account of delay of the "White Squall" in arriving in Long Beach Harbor, as hereinafter stated, said deadline of July 22, 1946, for establishing said credit [257] was thereafter by defendants Dulien orally extended to include July 27, 1946.

## V.

That a written sale order on a form supplied by Dulien was prepared by Dulien on July 12, 1946, dated July 12, 1946, numbered LA-712, signed by Dulien as "Dulien Steel Products, Inc., by E. S. Grinstein" and was signed by plaintiff, which sale order was admitted in evidence upon the trial of this cause as "Exhibit 2," but said sale order did not constitute the entire contract between plaintiff and Dulien as will hereinafter more fully appear.

That thereafter on July 26, 1946, Dulien informed plaintiff that the shipment of wire would be only 2300 tons of which Dulien would retain for itself 300 tons, and plaintiff orally agreed to said change in quantity; and thereupon and in that manner the quantity of plaintiff's agreed purchase was reduced to 2,000 tons of good wire. That, while the original



sale order (Exhibit 2) had provided that plaintiff from the 2700 tons mentioned therein might reject not more than 300 net tons due to "excessive weathering," by this change in amount it was agreed that Dulien would sell and deliver and plaintiff would buy 2,000 tons of good, non-rusty, merchantable wire, 1,000 tons of which would be galvanized and 1,000 tons black.

That the language of said sale order (Exhibit 2) was ambiguous on its face; the contract between plaintiff and Dulien consisted not only of said sale order dated July 12, 1946, but of the previous oral conversations between plaintiff and Dulien, the showing of the sample rolls and the giving of the sample cuttings of wire to plaintiff and the oral representations by Dulien in regard thereto, the subsequent conversations and documents reducing the quantity of the purchase to 2,000 tons and agreeing to renegotiate the price and to permit plaintiff a [258] delay of a few days in establishing credit, and the terms of the hereinafter mentioned letter of credit (Exhibit 5) which Dulien received and accepted and acted upon and upon which Dulien was paid by the bank; and that said contract in substance was that Dulien would sell and deliver to plaintiff and plaintiff would buy and receive from Dulien, for the total of \$214,000.00, payable upon draft by Dulien against letter of credit to be established by plaintiff with said bank on or before July 27, 1946, at the price of \$107.00 per ton f.o.b. steamer Los Angeles, 2,000 tons of good, non-rusty, merchantable barbed wire, 1,000 tons of which would be black and 1,000

tons galvanized, equal in quality and condition to the sample rolls shown and the sample cuttings given to plaintiff as herein stated, for export to and sale in South America by plaintiff, and that the title to said wire would be transferred by a full set of clean, on board, ocean bills of lading made out to order, blank endorsed, marked freight prepaid. That Dulien represented to plaintiff on July 11th and 12th, 1946, that such wire was then on board the steamship and was in transit on the high seas from Hawaii. And the Court finds that plaintiff believed and relied upon and acted upon all said representations so made by Dulien; and therefore the Court further finds that the intention of the parties to said contract was that Dulien would sell and plaintiff would buy said quantity and kinds of good barbed wire, that is to say, not rusty wire, which would be merchantable and could be used for the purpose for which Dulien then knew plaintiff intended it, that is, for export to and sale in South America.

## VI.

That on or about July 19, 1946, Matson, acting as above-stated in its capacity as berth agent for the United States of America and War Shipping Administration, by its own agent Castle & Cook, Ltd., in Honolulu, T. H., at the request of Dulien issued to Dulien bill of lading LA 29 and delivered the same to Dulien [259] on or about July 20, 1946. That said bill of lading LA 29 was dated July 12, 1946, and was admitted in evidence at the trial as "Exhibit C-N." That said bill of lading had been

prepared by Dulien for signature and issuance by Matson and was for approximately [260] 2300 tons of wire expressed in pounds. That it was not an "order" bill of lading as defined in 49 USCA Sec. 83 (one in which it is stated that the goods are consigned to the order of any person named in such bill), nor was it an "on board" bill of lading, nor was it negotiable; but it was a non-negotiable, straight, clean bill of lading; that is, it was a straight bill as defined in 49 USCA Sec. 82, in that it was therein stated that the goods were consigned to a specified person, to wit Dulien, Dulien being both the shipper and the consignee, and it was a clean bill in that it stated that said wire had been received by Matson, for the master of said vessel, from the shipper (Dulien) in apparent good order except as therein otherwise noted and there were no exceptions therein noted.

## VII.

That when said bill of lading LA 29 was so issued by Matson such a quantity of said wire upon which it was issued was obviously badly rusted that the Court finds that at that time substantially the whole shipment of said 2300 tons was badly rusted, and that its rusty condition was apparent and was known to Matson's said agent, Castle & Cook, Ltd., and to Matson at the time of the issuance and delivery of said bill of lading. That therefore said wire on which said bill of lading LA 29 was issued was not in such condition as to warrant the issuance of a clean bill of lading



thereon, but was in such condition as to require, under the provisions of Section 22 of Chapter 415 of the Act of August 29, 1916 (The Pomerene Act), Title 49 USCA Sec. 102, the notation on the bill of lading of exceptions to the "apparent good order" representations therein contained, indicating its rusty condition. That the rusting of said wire occurred prior to the delivery of said wire to the dock in Honolulu by Dulien and to the loading of the wire aboard the S. S. White Squall. That at all times mentioned in the complaint and at all pertinent times and in particular at the [261] time said wire was delivered by Dulien in Honolulu for shipment on the S.S. White Squall and at the time of the issuance and delivery of said bill of lading LA 29 the aforesaid badly rusted condition of said wire was well and truly known to Dulien.

That in the month of July, 1946, on a date prior to July 12, 1946, Matson issued to Dulien bill of lading LA 22 (Exhibit U-S-M) on another shipment of 1500 tons of barbed wire, described in said bill of lading as "29,126 rolls barbed wire 103# to the roll weight 3,000,000." That said bill of lading LA 22 (Exhibit U-S-M) was a clean, order bill of lading and showed the shipper as "Dulien Steel Products of California., c/o Lacy Hofius, Moana Hotel, Honolulu," and showed the consignee as "Order of Dulien Steel Products, of Calif. Notify: Gonzalez & Blanco, Los Angeles, Calif." That said bill of lading LA 22 was received by Dulien at its Los Angeles office on July 12, 1946, and, duly endorsed by Dulien, was de-



livered and negotiated to Gonzalez & Blanco's agent, the California Bank, in Los Angeles prior to July 19, 1946.

That on July 19, 1946, the S.S. White Squall with a shipment of approximately 3800 tons of barbed wire aboard sailed from Honolulu for Los Angeles, California. That making up said shipment of approximately 3800 tons of barbed wire were approximately 2300 tons (See Finding of Fact XXX) for which said bill of lading LA 29 (Exhibit C-N) was issued and 1500 tons for which said bill of lading LA 22 (Exhibit U-S-M) was issued.

#### VIII.

That on or about July 24, 1946, Dulien received at its Los Angeles office from its shipping agent in Honolulu the original bill of lading LA 29 and a copy thereof; and after the receipt thereof Dulien, by a letter dated July 25, 1946 (Exhibit 3), signed by Dulien, by L. P. Stanley, informed plaintiff that Dulien then had the "on board" bill of lading and required of plaintiff that the credit for the purchase price of the wire be established, as agreed, at the bank not later than 3:00 p.m., July 26, 1946; that at the time of writing said letter Dulien knew that [262] the only bill of lading which it could deliver to plaintiff was the above-mentioned non-negotiable straight bill of lading showing Dulien as both consignor and consignee and knew that Dulien could not comply with the representations and warranties theretofore made to plaintiff as

hereinbefore set forth, but did not inform plaintiff of those facts.

IX.

That the steamship "White Squall" was delayed and docked on July 26, 1946, at Pier A at Long Beach Harbor instead of at Los Angeles Harbor and on said day, July 26, 1946, Dulien orally to plaintiff extended to Saturday, July 27, 1946, the deadline for the establishment by plaintiff of the agreed credit at the bank.

X.

That on July 27, 1946, at its Wilmington, California, office, Matson prepared and on July 29, 1946, issued and delivered to Dulien the freight bill which was admitted in evidence as "Exhibit 7," upon a printed form containing in typewriting the same language descriptive of said wire and the same format as was and is found in bill of lading LA 29, and containing no notations of exceptions indicating the rusty condition of said wire. That on July 29, 1946, the bank was then familiar with Matson's printed form on which bill of lading LA 29 was prepared. That it was then Matson's custom and practice to cause each freight bill issued by it to contain all the descriptive information about the shipment covered thereby as was contained in the bill of lading issued upon the same shipment. But Matson was under no legal obligation to insert any exceptions in said freight bill. That on July 29, 1946, the bank was not familiar with and had no knowledge of said custom or practice of Matson

in connection with its freight bills and the bank was not then familiar with the form of freight bill issued by Matson. [263]

### XI.

That on Saturday morning, July 27, 1946, before any of said wire had been unloaded and before plaintiff had had an opportunity to see or had seen any of the wire plaintiff, for \$214,000.00 purchased from defendant bank upon his written application therefor (Exhibit 4) and received from the bank and personally by hand delivered to Dulien on July 27, 1946, the bank's irrevocable letter of credit (Exhibit 5) by its terms good until July 31, 1946, in favor of "Dulien Steel Products, Inc.," for \$214,000.00 to cover the purchase price of 2000 tons of wire at \$107.00 per ton. That the \$214,000.00 purchase price of said letter of credit was paid by plaintiff in two installments: \$160,000.00 on July 27, 1946, and the balance of \$54,000.00 on the following Wednesday, July 31, 1946, as is hereinafter stated.

### XII.

That by the terms of said letter of credit and the written application therefor defendant bank was instructed by plaintiff, and it contracted and bound itself, to pay to "Dulien Steel Products, Inc.," for account of plaintiff \$214,000.00 on said Dulien's sight drafts accompanied by "Full set clean on board ocean bills of lading made out to order, blank endorsed, marked freight prepaid" and by "commercial invoices evidencing shipment of 2,000 tons barbed wire c.i.f. Los Angeles Harbor



in one shipment from Honolulu, T. H. to Los Angeles Harbor.” That in the shipping business “c.i.f.” means “cost, insurance and freight” and the use of such term indicates that the merchandise will be delivered at the destination or port of discharge free of any charges for any of said items. That on the same day, July 27, 1946, plaintiff orally instructed the bank that upon the bank’s receipt of said documents specified in and required by said letter of credit the bank should authorize Mattoon & Company, Inc., an independent shipping agent and ocean freight forwarder having a Los Angeles [264] office, to ship said wire to South America subject to directions to be thereafter given to Mattoon & Company, Inc., by plaintiff.

### XIII.

That after obtaining said letter of credit from the bank on July 27, 1946, plaintiff later on the same day, Saturday, personally delivered said letter of credit to Dulien by delivering the same to E. S. Grinstein at Dulien’s Los Angeles office at 11601 South Alameda Street. That Dulien then and there received and accepted and proceeded to and did as soon as possible thereafter act upon said letter of credit, with full knowledge of the fact that it, Dulien, could not comply with the requirements thereof or deliver to plaintiff 1,000 tons of black non-rusty merchantable wire and 1,000 tons of galvanized non-rusty merchantable wire in accordance with Dulien’s contract with plaintiff as herein elsewhere set forth. That on Monday, July 29, 1946,



Dulien, well knowing that said bill of lading was not an on-board bill of lading, or an order bill of lading, and knowing that it was not negotiable and that it bore no endorsement by Dulien, the consignee named therein, but knowing that on the contrary it was a non-negotiable straight bill showing Dulien as both consignor and consignee and that therefore it was not such a bill of lading as would meet the requirements of said letter of credit, paid at Matson's Wilmington, California, office the freight due Matson on said shipment and surrendered the original bill of lading LA 29 to Matson and left it at Matson's Wilmington office and then and there obtained from Matson at its Wilmington office the receipted original freight bill which was admitted in evidence as "Exhibit 7" and forthwith thereafter, in the morning on the same day presented to the bank said letter of credit (Exhibit 5), a draft for \$214,000.00 (Exhibit 17) drawn by "Dulien Steel Products, Inc., of California, L. P. Stanley," said freight bill (Exhibit 7) and one commercial invoice (Exhibit 6) and demanded payment of its said draft. That [265] Dulien did not present or exhibit to the bank at that time or at any other time and the bank did not then or at any other time receive or see or rely upon said bill of lading LA 29 or any bill of lading whatever or any copy of any bill of lading for said wire; but, upon Dulien's presentation to the bank of said freight bill and the other documents last above mentioned, the bank carelessly and negligently and in violation of its ex-

press contract with plaintiff accepted said freight bill in place and instead of requiring the delivery to it of a full set of clean, on board, order, blank endorsed, marked freight prepaid bills of lading, or any bill of lading, and delivered to Dulien, in payment of said draft, and Dulien received and accepted from the bank and cashed immediately, the bank's Cashier's check (Exhibit 18) for \$214,000.00 payable to "Dulien Steel Products, Inc., of California," in complete negotiation of said letter of credit. Dulien at no time transferred to plaintiff or delivered to plaintiff or to the bank or any agent or representative of plaintiff or of the bank said bill of lading LA 29, nor any bill of lading or copy of any bill of lading nor did Dulien at any time prior to the presentation and acceptance of payment of said letter of credit (Exhibit 5) transfer to plaintiff any rights under said bill of lading.

#### XIII-a.

That said payment to Dulien was made by the bank at about 10:00 o'clock on Monday morning, July 29, 1946, before plaintiff had seen, or had had an opportunity to see, any of said wire and was made in disregard and violation of the terms of the contract between plaintiff and the bank and specifically said letter of credit and the instructions given by plaintiff in his application therefor, in that it was made without receiving from defendant Dulien the required bill of lading or any bill of lading whatever. [266]

## XIV.

That on the same day, July 29, 1946, after having made such payment to Dulien the bank sent to Mattoon & Company, by messenger, the original freight bill (Exhibit 7) with a letter of transmittal. That on the following day, July 30, 1946, by telephone the bank requested Mattoon & Company to return to the bank said letter of transmittal, together with the document which had been delivered with it to Mattoon & Company. That on July 31, 1946, Mattoon & Company, by its Los Angeles office manager, James E. Sweeney, personally returned said freight bill and original letter of transmittal to the bank in the presence of plaintiff, and the bank thereupon reported to plaintiff in writing in a letter dated July 29th but actually then and there for the first time delivered to plaintiff on July 31st (Exhibit C-F) that it had made payment to Dulien of \$214,000.00 upon Dulien's draft drawn under said letter of credit and accompanied by the documents called for therein, including the required bill of lading; and thereupon the bank caused to be dictated a new letter to Mattoon & Company (Exhibit C-D) which was thereafter written and later transmitted to Mattoon & Company, to which letter the date of July 29, 1946, was given, although it was not actually typed and signed until on or after July 31, 1946. That the said last mentioned letter, by its language, purported to transmit to Mattoon & Company an original bill of lading on 2300 tons of barbed wire, but no bill of lading accompanied it nor did the bank then or at any time thereafter



or at any time before then or ever have or obtain or transmit to anybody any bill of lading for said barbed wire. That upon the return by Mattoon to the bank on July 31, 1946, of the first July 29, 1946, letter of transmittal from the bank to Mattoon, the bank destroyed said letter and all copies which had been made thereof and before the commencement of the trial of this cause the shorthand notes thereof had likewise been destroyed by the [267] bank. That upon the receipt by Mattoon & Company of said second transmittal letter (Exhibit C-D) dated July 29, 1946, but written on or after July 31, 1946, Mattoon & Company, laboring under the mistaken belief that the bank had in its possession the bill of lading for said wire, and considering itself as the bank's agent insofar as any handling of any bill of lading on said wire was concerned, acknowledged on a copy of the letter (C-D 1) receipt of the bill of lading mentioned therein; but Mattoon & Co. did not at that time nor at any other time receive, nor had it prior thereto received, nor did it ever thereafter receive, the bill of lading mentioned therein or any bill of lading whatsoever. That in executing said receipt on "Exhibit C-D 1" Mattoon & Company was not acting as plaintiff's agent, but was acting as the bank's agent in an effort to protect the bank's interest in said wire under the bank's hereinafter mentioned lien thereon.

## XV.

That after the return, on July 31, 1946, of the paid freight bill (Exhibit 7) by Sweeney of Mat-



toon & Company to the bank the bank handed said paid freight bill back to Sweeney, or to the plaintiff in Sweeney's presence, and requested of the plaintiff that an endorsement of said freight bill be obtained from Dulien, but said bank referred to said freight bill at said time as a bill of lading, and thereafter on the same date, pursuant to said request by the bank, plaintiff, accompanied by Sweeney, took said freight bill to Dulien's Los Angeles office at 11601 Alameda Street and in the presence of Sweeney and plaintiff in Dulien's office, Dulien, by L. P. Stanley, well knowing that said freight bill was not the bill of lading for said wire or any bill of lading and that Dulien could not then deliver or transfer to plaintiff the bill of lading or any bill of lading for said wire, typed and signed the endorsement which now appears on the reverse side of said freight bill. That said freight bill was not a bill of lading [268] and was not a document of title at all, and any reference to it as such is not and was not true and no endorsement of said bill of lading LA 29 (Exhibit C-N) or any copy thereof was ever made by anyone at any time.

#### XVI.

That after the plaintiff had signed the note in the sum of \$54,535.00 payable to the bank (see Finding XXXII) and after said endorsement on the back of the freight bill was received from Dulien, and later on the same day, July 31, 1946, plaintiff for the first time learned it to be true that the wire for which plaintiff's money had been paid

by the bank to Dulien, two days before on July 29th, was badly rusted, as heretofore found (Finding No. VII) and was unmerchantable wire for the purposes for which it was sold to and purchased by plaintiff; that plaintiff first learned such to be the fact when late in the afternoon on Wednesday, July 31, 1946, on the Moore-McCormack dock at Terminal Island plaintiff saw for the first time a small quantity of wire identified as for him, which had been moved from the dock at Pier 1 A, Long Beach under his previous instructions for the shipment of wire to South America. That immediately upon such discovery by him he instructed Mattoon & Company not to ship any of such wire to South America and on the following day, August 1, 1946, he wrote Dulien a letter (Exhibit 23) informing Dulien of the failure of the wire to meet the requirements of the agreement between them and asking for a renegotiation of the price. That thereafter on August 5, 1946, Dulien, by its manager, E. S. Grinstein, in company with plaintiff inspected the portion of said total shipment of 3800 tons of wire then unloaded from the S. S. White Squall which was on the dock at Pier 1 A, Long Beach, for ultimate delivery to plaintiff and observed and admitted its rusty condition and subsequently thereto, on August 7, 1946, wrote plaintiff a letter (Exhibit 25). That by plaintiff's said letter of August 1, 1946 (Exhibit 23), and Dulien's said [269] letter of August 7, 1946 (Exhibit 25), and the conversations ensuing between plaintiff and defendants Dulien between said dates, defendants Dulien on

account of the rusty condition of the said wire on the dock at Pier 1 A, Long Beach, intended for delivery to plaintiff agreed with plaintiff to renegotiate the price which the plaintiff had theretofore paid to defendants Dulien for said wire. That Dulien, by its subsequent conduct in regard to [270] such request, failed and refused to enter into any such negotiations with plaintiff or to make any acceptable or proper or any adjustment on account of the bad condition of the wire with relation to price or otherwise, and said to plaintiff: "The wire is yours and the money is ours." That plaintiff did not on August 1, 1946, or at any time prior to September 4, 1946, know that the bank had not obtained the required or any bill of lading from Dulien, which fact plaintiff learned for the first time on September 4, 1946, and at all times prior to September 4, 1946, in reliance upon the bank's representations to him believed the fact to be that said bank had obtained from Dulien a full set of clean, on board, ocean, bills of lading, made out to order, blank endorsed for 2,000 tons of clean, non-rusty merchantable wire prior to the bank's payment to Dulien of plaintiff's \$214,000.00 on July 29, 1946.

#### XVII.

That Dulien delivered 41,076 rolls of barbed wire to Castle & Cooke Terminals, Ltd., (hereinafter referred to as Terminals) at the dock operated by Terminals at Honolulu, T. H. Said delivery was commenced on June 28, 1946, and was completed on or before July 19, 1946. At all such times Ter-



minals was acting as terminal operator for respondent War Shipping Administration under and pursuant to its contract with said War Shipping Administration, No. WSA-4-946 (Exhibit M-B-5) and Terminals was at no time acting as Matson's agent. That Dulien delivered 43,478 rolls of barbed wire to Inter-Island Steam Navigation Company, Ltd., agent for said Lykes Bros. S.S. Company, general agent for said S.S. White Squall and said War Shipping Administration between June 3, 1946, and July 9, 1946, during which period said 43,478 rolls of wire were stored in an open area at the pier in Honolulu. All of the said barbed wire (84,554 rolls) was delivered by Dulien, as aforesaid, without any marks or other means of identification thereon and without any segregation as to quality or condition or as to which portion was for delivery to Gonzalez & Blanco under [271] negotiable order bill of lading LA 22 or which portion was for delivery to Dulien under non-negotiable straight bill of lading LA 29. Dulien at no time made any request to Terminals or to defendant Matson or its agents or representatives, or to the carrier, or any agent or representative of the carrier, that any of said rolls of barbed wire be marked or otherwise identified or segregated. That at no time did Matson or Terminals or Marine Terminals put any marks of identification on said wire and did not in any manner at any time segregate the wire which was covered under said bill of lading LA 29 from that which was covered by or under said bill of lading LA 22. All of said



rolls of wire were loaded on said S.S. White Squall at Honolulu, T. H., by Terminals, acting as stevedoring contractor for the War Shipping Administration under and pursuant to its contract with said War Shipping Administration, Warship-steve No. WSA 4-3079 (Exhibit M-B-6).

55,428 of said 84,554 rolls of barbed wire were consigned by Dulien as shipper to Dulien as consignee on straight bill of lading LA 29 (Exhibit C-N) and were described by Dulien in said bill of lading as "Rolls Barbed Wire" weighing approximately 4,599,948 pounds or approximately 2300 tons (shipper's measurement and weight), 29,126 of said 84,554 rolls of barbed wire were consigned by Dulien as shipper to the order of Dulien, notify Gonzalez & Blanco, as consignee under negotiable order bill of lading LA 22 issued by Matson, bearing no date other than July . . ., 1946 (Exhibit US-M), and were described by Dulien in said bill of lading as "Rolls Barbed Wire, 103# to the Roll" and the weight of said rolls was therein stated to be approximately 3,000,000 pounds or approximately 1500 tons. That neither Dulien nor Matson nor the carrier weighed said wire or any of it covered by said bills of lading LA 22 and LA 29 at the time of loading on the S.S. White Squall and the tonnage stated in bills of lading LA 22 and LA 29 was based upon estimates as hereinafter in paragraph XXX set forth. Said two shipments, totaling approximately 3800 tons were not [272] separated or segregated in said ship, S.S. White Squall, either as to quality or as to which portion was for delivery

under negotiable order bill of lading LA 22 or which under non-negotiable straight bill of lading LA 29; and no request for any such separation or segregation was made by Dulien to anyone. Prior to the execution of Exhibit 2 by the plaintiff and Dulien on July 12, 1946, and prior to the issuance and delivery to Dulien of either of said bills of lading Dulien had agreed with Gonzalez & Blanco that Gonzalez & Blanco would have the right to select 1500 tons of good wire from said total shipment of 3800 tons, upon arrival in Los Angeles.

All of said rolls of barbed wire were transported from Honolulu, T. H., to Long Beach, California, by S.S. White Squall. Said ship sailed from Honolulu, T. H., on July 19, 1946, and arrived at Long Beach, California, on July 26, 1946. All of said rolls of barbed wire were unloaded from said ship at Pier 1 A, Long Beach, California, commencing on July 28, 1946, and ending on August 7, 1946, by Marine Terminals Corporation, acting as stevedoring contractor for the War Shipping Administration under and pursuant to its contract with said War Shipping Administration, Warshipsteve No. WSA 4-1470, DA-WSA-4-403 (Exhibit M-B-8). When said rolls of wire were unloaded, as afore-said, it was found by the stevedores that because said rolls of barbed wire had not been marked or otherwise identified or segregated when loaded on said ship it was impossible to determine which or what portion of said rolls of barbed wire should be delivered to Gonzalez & Blanco under its negotiable order bill of lading LA 22 and which or

what portion of said rolls of barbed wire should be delivered to plaintiff. That included in said two shipments of approximately 3800 tons of barbed wire there were only approximately 1500 tons of good wire, and substantially all the balance of said 3800 tons of said barbed wire was rusty and non-merchantable for export sale in South America, as herein elsewhere found, and was unacceptable to Gonzalez & [273] Blanco under order bill of lading LA 22. That over plaintiff's repeated protests to Matson, during the time of unloading and delivery of said 3800 tons of wire, War Shipping Administration and Matson knowing that bill of lading LA 22 was an order bill of lading and had been endorsed to Gonzalez & Blanco permitted Gonzalez & Blanco to remove said 1500 tons of good wire from the dock at Long Beach and refused to permit any selection of good, non-rusty wire by plaintiff from said 3800-ton shipment until Gonzalez & Blanco had satisfied their demand for 1500 tons of good wire under order bill of lading LA 22. That Matson and War Shipping Administration at all times pertinent hereto knew that bill of lading LA 22 was a clean, order, bill of lading for 1500 tons of barbed wire, obligating Matson and War Shipping Administration to deliver to the holder thereof 1500 tons of non-rusty wire and also knew that the remainder of the approximately 3800 tons of barbed wire on said S.S. White Squall was covered by a straight bill of lading from Dulien to Dulien (LA-29) and not an order bill of lading, but did not inform plaintiff thereof until on or about the 10th day of



September, 1946. At all such times Transmarine Navigation Company was acting as terminal operator for said War Shipping Administration in conducting terminal operations at Pier A, Long Beach, under and pursuant to its contract with said War Shipping Administration, No. WSA 4-803 (Exhibit M-B-7), and delivered said wire to Gonzalez & Blanco upon express orders to that effect received by it, Transmarine Navigation Company, from Matson.

### XVIII.

That substantially all the wire made available to and delivered to plaintiff under his purchase from Dulien, and which plaintiff was permitted to remove from the dock after the bank's payment of \$214,000.00 to Dulien, was, at the time of delivery thereof to plaintiff, badly rusted and was inferior in all respects to the representations and warranties of Dulien to plaintiff of [274] its condition and to the rolls and cuttings which were exhibited to plaintiff as samples on July 11th and 12th, 1946; that some of it was so rusty that it could easily be broken with the bare hands of an ordinary person; much of it was covered and caked with mud; and the entire shipment when unloaded on the dock at Long Beach was unmerchantable and of a then undetermined value; that it consisted of approximately 55,428 rolls; that no substantial portion of it was of the quality warranted by Dulien; and that although some of [275] said 55,428 rolls were good, they were so few in number and so interspersed among and comingled with the great quantity of bad wire



that it can only be said, and the Court finds, that the entire shipment of 2300 tons under bill of lading LA 29 was badly rusted and was unmerchantable in that it was in such poor condition that the reasonable market value thereof was not, nor would or did it bring on sale thereof, anything approaching the value it would have had, or the sale price it would have brought, or the price which plaintiff had agreed to pay Dulien therefor, if it had been wire of the quality and in the condition which Dulien warranted and agreed to deliver to plaintiff.

That when Dulien executed the sale order to plaintiff on July 12, 1946, and at all times thereafter it knew full well the true condition of said wire. That Dulien had purchased said wire from the Department of Interior of the United States in the Spring of 1946, as surplus unused barbed wire and Louis Dulien, the President of both defendant Dulien corporations, himself had seen it in Hawaii; and after its said purchase Dulien had, with full knowledge of its bad condition, caused it to be oiled in Hawaii, for the purpose of preventing further rust and more particularly for the purpose of concealing the then obviously existing rust from prospective buyers thereof.

### XIX.

That upon the surrender of bill of lading LA 29 by Dulien to Matson on Monday morning, July 29, 1946, because it was a non-negotiable straight bill of lading, which in the ordinary course of Matson's business was regarded as "spent" or "accomplished"

when surrendered by the consignee, it was by Matson not considered of any particular importance and it was filed in one of Matson's inactive files at Matson's Wilmington office. Thereafter, in an effort to ascertain what kind of bill of lading the bank had received from Dulien, plaintiff, not knowing that the bank had not [276] received any bill of lading at all, inquired of Matson's Wilmington office and Matson's Los Angeles office about the whereabouts of the bill of lading and in response thereto Matson repeatedly and continuously, in August and September of 1946, both directly and indirectly, informed plaintiff that the original bill of lading LA 29 had never been surrendered to Matson. Shortly after the above-entitled action was filed Matson searched for said original bill of lading LA 29 and failed to find it but did find a carbon copy thereof, as issued in Honolulu, and said carbon copy of said bill of lading LA 29 was produced by Matson during the taking of a deposition prior to the date of trial and a photostatic copy thereof was attached to Matson's answer filed herein. In said answer, filed September 15, 1948, Matson alleged that the original bill of lading LA 29 had never been surrendered to Matson. On April 10, 1950, the day prior to the date this case was then set for trial, while a search was being made by Matson at its Wilmington office, pursuant to a subpoena duces tecum for certain other documents, including the original bill of lading LA 22, Matson, for the first time after this action was filed, found the original bill of lading LA 29 in one of its

inactive files, and such discovery was by Matson's attorneys immediately reported to the attorneys for all other parties in the above-entitled action, together with the circumstances in connection with such discovery, and said bill of lading was shown to all such attorneys immediately and a few days prior to the date of trial, and was received in evidence as Exhibit C-N.

## XX.

That Matson, acting under the express orders of War Shipping Administration, refused to recognize any obligation on its part or that of War Shipping Administration to plaintiff under said bill of lading LA 29 and refused to permit plaintiff to select and take delivery of any good wire from said 3800 ton shipment until Gonzalez & Blanco had first made its selection of 1500 tons of good wire [277] under its order bill of lading LA 22 and had taken delivery thereof, and caused to be delivered to Gonzalez & Blanco by Transmarine Navigation Company, and gave to Gonzalez & Blanco the right to select and choose and remove from said dock at Long Beach, over plaintiff's repeated protests, said 1500 tons of good wire; and the balance of said shipment consisting, as hereinbefore found, of substantially 2300 tons of bad, rusty, muddy, breakable, unmerchantable, wire was made available to Dulien and plaintiff. That under the permission of Matson and War Shipping Administration delivery of approximately 300 tons was taken by Dulien at the dock at Pier 1-A, Long Beach, from Transmarine Navi-



gation Company in December, 1946, pursuant to the order of Dulien contained in a letter from Dulien to Matson dated August 28, 1946 (Exhibit 67), and the balance of the substantially 2300 tons of bad, rusty, muddy, breakable, unmerchantable wire, was made available to plaintiff as aforesaid and herein elsewhere found.

That at all times Matson refused to recognize that plaintiff had any rights under said bill of lading LA 29 or any rights other than the rights of a purchaser of 2000 tons of barbed wire from Dulien, because plaintiff had not presented bill of lading LA 29 or any bill of lading to Matson and did not have possession of such or any bill of lading covering said barbed wire, or any portion thereof, and because in any event said bill of lading LA 29 was a straight bill of lading from Dulien as consignor to Dulien as Consignee and was not a negotiable order bill of lading. At all times hereinabove mentioned and in connection with its aforesaid acts, Matson was acting solely as berth agent for the War Shipping Administration under and pursuant to its contract with the War Shipping Administration (Exhibit 61) and under the express orders and directions of said War Shipping Administration, Matson's principal.

## XXI.

That plaintiff in all his conduct in regard to the wire [278] after said payment to Dulien of \$214,000.00 by defendant bank on July 29, 1946, and after his discovery of the bad condition of the wire,



acted with diligence, efficiency and promptness and due regard for the rights of the defendants and respondents, and did everything which he could do or which was reasonably required of him in regard thereto in mitigation of the damages he had then suffered as herein elsewhere found. That he kept all of the defendants and respondents informed of his plans, his efforts and his conduct in that regard and gave them ample notice and opportunity to better the situation if they had been inclined so to do.

## XXII.

That at no time prior to August 23, 1946, did plaintiff know, or even suspect, or have any reason to suspect, that the bank had paid the \$214,000.00 to Dulien without obtaining the required bill of lading. That the first suggestion plaintiff received to that effect was on August 23, 1946, at the office of Koppel Bros. in Wilmington; and the first actual knowledge or first-hand information he received to that effect was received by him September 4, 1946, when at Dulien's office, L. P. Stanley (who was employed by Dulien) informed him that the bill of lading had not been delivered to the bank at all but had been surrendered by Dulien to Matson at Matson's Wilmington office and left there at the time the freight bill was paid and prior to the presentation by Dulien to the bank of the letter of credit (Exhibit 5) and Dulien's demand for payment thereof and the payment thereof to Dulien by the bank on July 29, 1946.

That everything of consequence which plaintiff

did in regard to the wire after that discovery was done after ample notice and opportunity to the defendants and respondents to better the situation, and with the full knowledge of Matson and the full knowledge and consent of the bank and Dulien, which consent, however, was given under an agreement that it be without prejudice to the rights of any of the parties hereto against any of the other parties hereto. [279]

### XXIII.

That there was no failure on plaintiff's part in any respect to do everything reasonably required of him in mitigation of damages after his discovery of the bad condition of the wire and after his discovery still later of the fact that the Bank had breached its letter of credit contract by paying Dulien without obtaining the required bill of lading. That plaintiff is not estopped from claiming, and the Court hereby finds that he is entitled to claim and that it is true, that at no time was there an acceptance of the wire by him; that he never freely and voluntarily accepted any of it, but that he rejected all of it and after such rejection took 1,913.3325 tons of wire as herein elsewhere found only because he had no reasonable alternative but to mitigate the damages by salvaging what he could from it and then bring this action against the defendants for damages. That when he first took delivery of any of the wire his money had already been paid out by the Bank for it and none of the defendants or respondents would or did then assume any responsibility for the poor condition of the

wire or for its removal from the dock, or for the return of plaintiff's money to him. That never at any time did plaintiff approve or authorize in advance or ratify afterward the Bank's payment to Dulien upon the receipt of the freight bill instead of the required bill of lading. That he did not tell Mr. Thomas Moran, or anyone else acting for the Bank, that he approved payment upon a straight bill of lading or any bill of lading other than that required by the language of the letter of credit. That he did not, nor did any agent of his, nor did any person acting on his behalf, ever receive from the Bank or from anyone else the bill of lading required by the terms of the letter of credit or any bill of lading, nor did plaintiff or any agent of his have knowledge of any of the terms of, or description of the wire contained in, bill of lading LA 29 [280] (Exhibit C-N) until long after the Bank had paid Dulien \$214,000.00 as aforesaid. That the reference in the undated delivery order from Mattoon & Co. to Matson (Exhibit C-U) to "bill of lading LA 29 attached" was incorrect and that no bill of lading was attached to said delivery order or had ever been in the possession of Mattoon & Co. or the Bank.

#### XXIV.

That plaintiff in mitigation of damages and after ample prior notice to defendants and with their full knowledge did everything reasonably within his power to dispose of all said wire to the best advantage and at the highest available prices, and he did obtain the highest available prices therefor. That



prior to the issuance of letter of credit (Exhibit 5) and prior to the time of the arrival of the S.S. White Squall with the wire on board, plaintiff had agreed to sell 1,000 tons of barbed wire to Alberto Echavarria of the city of Medellin, Colombia, at the rate of \$160.00 per ton. That on account of the bad, rusty condition of the wire, it was rejected by the said Alberto Echavarria at the agreed price and plaintiff was forced to accept and did accept therefor, from the said Alberto Echavarria, the sum of \$75.00 per ton, f.o.b. at Los Angeles, for 1,025.99 tons shipped to Colombia in 1946. That said sale price of \$75.00 per ton paid by Alberto Echavarria was a reasonable price for the wire so purchased by him in its rusty condition, and the acceptance thereof by plaintiff was in good faith and in mitigation of damages. That plaintiff took delivery from Transmarine Navigation Company of what was represented to him as being approximately 2,000 tons of barbed wire, but actually received only 1,913.3325 tons of wire on the dates and in the amounts hereinafter in this paragraph set forth, and received the following sums of money from the following purchasers for the following quantities of wire sold by him, including the 1,025.99 tons sold as aforesaid to the said Alberto Echavarria, of Medellin, Colombia; [281] and the prices at which all said sales were made were in each instance the reasonable value of the wire so sold in its rusty condition, and plaintiff's acceptance thereof was in good faith and in mitigation of damages:



1025.99 tons of wire purchased by Alberto Echavarria and shipped to Colombia on:			
	Tons	Ton Price f.o.b. L.A.	Amount Received
August 9, 1946 .....	112.75	\$75.00	\$ 8,456.25
August 20, 1946 .....	413.1845	75.00	30,988.50
September 29, 1946 .....	500.06	75.00	37,504.50
Wire sold to Gonzalez & Blanco:			
a. Sept. 27, 1946, for experi- mental pickling for the pur- pose of determining price at which Gonzalez & Blanco would buy balance of wire....	24.30	65.00	1,579.50
b. Under contract of October 22, 1946 .....	734	51.00	37,434.00
Plus flat extra agreed .. payment of .....			1,000.00
c. May 6th, 1947 .....	104	4.50	468.00
Wire shipped to Colombia on May 4, 1947, and sold there.....			
	25.0425	7.50	187.81
Interest paid by Gonzalez & Blan- co on May 23, 1947, on deferred purchase price for 734 tons above mentioned .....			
			222.73
Total received by plaintiff....	1913.3325		\$117,841.29

That from all said sales of said wire plaintiff re-  
ceived the gross sum of \$117,841.29. [282]

## XXV.

That by reason of the bad condition of the wire  
so delivered to plaintiff at Long Beach there was  
no market for it in Southern California or the  
United States for domestic use.

That from the time that said wire was unloaded  
on the dock at Long Beach no one of the defendants  
or respondents was willing to, or did voluntarily,  
assume any responsibility in regard thereto except  
that Matson, acting as agent as aforesaid, and War  
Shipping Administration gave Gonzalez & Blanco

the above-mentioned priority of selection of good wire from the total cargo of 3,800 tons on board said S.S. White Squall and Dulien removed and retained for Dulien approximately 300 tons as elsewhere herein found; and that with those exceptions the defendants and respondents and each of them by their acts, statements and omissions in relation to the wire, gave plaintiff clearly to understand that the responsibility for the disposition thereof lay with plaintiff, and that if anything was to be done about it he would have to do it. That from and after August 21, 1946, demurrage was accruing upon such of the wire as remained on the dock and the dock authorities wanted it moved and plaintiff was aware of those facts. That in order to ascertain the reasonable market value in Los Angeles County for export of the wire made available and delivered to and taken by plaintiff as herein elsewhere set forth and to determine what could and should be done with it, and to minimize the loss thereon and mitigate the damages to plaintiff proximately caused by defendants Duliens' breach of warranty and the Bank's breach of contract as herein elsewhere found, and in connection with and in order to effect such sales so made by plaintiff in mitigation of damages, it was reasonably necessary that there be expended, and plaintiff for that purpose prior to October 22, 1946, did expend the following sums of money, or incurred the following obligations, in the necessary selection, segregation and moving of said wire on and from the dock, and in wharf and dock charges which accrued thereon

while said wire remained upon the dock at Pier A, Long Beach, while plaintiff was trying to dispose of it, to wit: [283]

Item	Amount
Dock storage .....	\$2,837.45
Inspection by Los Angeles Cargo Appraisers .....	39.85
Segregation and supervision .....	48.00
Extra drayage on account of poor condition of wire .....	130.50
Sorting labor on account of poor condition of wire .....	2,734.86
Extra charges made by Mattoon & Co., Inc.	750.00
Total .....	<u>\$6,540.66</u>

That all of said special expense items, totaling \$6,540.66, were paid or incurred by October 22, 1946.

## XXVI.

That for the purpose of mitigating the damages proximately caused by Dulien's breach of warranty and the Bank's breach of contract as herein elsewhere found, it became and was necessary that plaintiff remain in California, devoting his time and business efforts to the matter of the sale of said wire until proper disposition thereof could be made, and he did remain in California away from his own country and business for three months, that is, from July 29, 1946, until about November 1st, 1946, for that purpose. That his reasonable living and incidental expenses on account of such stay, and during that time, amounted to \$3,000.00.



That within that time he necessarily spent that amount and the expenditure thereof in his mitigation efforts was justified by the fact that by so remaining and personally attending to the matter he effected sales for substantially more money net, after the deduction of such expenses, than would have been realized otherwise. [284]

### XXVII.

That said gross amount of \$117,841.29 so received by plaintiff from the sale of said wire, as hereinbefore stated in paragraph XXIV, was the value on July 29, 1946, and at all times thereafter up to and including the respective dates of sales of the respective portions thereof, of the wire which plaintiff received from Dulien; and after deducting therefrom the above-enumerated expenses of \$6,540.66 and \$3,000.00, together totaling \$9,540.66, plaintiff's net recovery from the sale of said wire was \$108,300.63. That all of the items making up said total expenses of \$9,540.66 were reasonably and necessarily expended or incurred by plaintiff in his efforts to mitigate damages and were made necessary and were proximately caused by the failure of Dulien to perform the contract of Dulien with plaintiff and by the failure of the Bank to perform its contract with plaintiff, both as herein elsewhere found.

### XXVIII.

That the reasonable market value in Los Angeles County, California, on July 29, 1946, for export in ton lots of merchantable black barbed wire free



from rust, of the type and quality of the wire which Dulien agreed to sell and warranted to plaintiff, was \$130.00 per ton, or \$130,000.00 for 1,000 tons, and under plaintiff's contract of purchase with Dulien plaintiff was entitled to receive from Dulien 1,000 tons of such wire. That the reasonable market value in Los Angeles County, California, on July 29, 1946, for export in ton lots of merchantable galvanized barbed wire, free from rust, of the type and quality of the wire which Dulien agreed to sell and warranted to plaintiff, was \$160.00 per ton, or \$160,000.00 for 1,000 tons, and under plaintiff's contract of purchase with Dulien plaintiff was entitled to receive from Dulien 1,000 tons of such wire. That the reasonable market value for export of 2,000 tons of such wire, consisting of 1,000 tons of each kind, on July 29, 1946, was \$290,000.00. That the difference between the value of the wire delivered to plaintiff at the times of the delivery thereof to him [285] and the value which said wire would have had if it had answered to the warranty thereof made to plaintiff by Dulien as aforesaid was the sum of \$172,158.71.

That the said expenses of \$9,540.66 set forth in paragraph XXV were all necessarily incurred and expended by plaintiff in order that the above-mentioned gross sum of \$117,841.29 might be obtained from said mitigation sales set forth in paragraph XXIV, and if said expense items had not been so expended by plaintiff there would not have been received from said mitigation sales as large a net recovery as was obtained by reason of such

expenditures. That, therefore, plaintiff is either entitled to have the value of said wire as of July 29, 1946, determined as against Dulien in the amount of said gross receipts of \$117,841.29 less said expenditures of \$9,540.66, that is, \$108,300.63, or he is entitled to have such value as of July 29, 1946, determined in the sum of \$117,841.29 and to recover from Dulien as special damages arising from the special circumstances set forth in paragraphs XXV and XXVI in the amount of such expenditures, to wit, \$9,540.66. The Court therefore finds that the gross amount of \$117,841.29 so received by plaintiff from the sale of said wire was the value on July 29, 1946, and at all times thereafter up to and including the respective dates of the sales of the respective portions thereof, of the wire which plaintiff received from Dulien; that plaintiff is therefore entitled to recover from Dulien the difference between \$290,000.00, the value which said wire would have had if it had complied with Dulien's warranty, and the said sum of \$117,841.29, to wit, \$172,158.71, and in addition thereto as special damages by reason of the above-found special circumstances the above-stated sum of \$9,540.66, making a total damage for which defendants Dulien are liable to plaintiff the sum of \$181,699.37, as of July 29, 1946. That is to say, plaintiff's total damage proximately caused by Dulien's breach of warranty [286] is the sum of \$299,540.66, against which there should be set off the sum of \$117,841.29, which is the amount received by plaintiff in mitigation and diminution of

damages, leaving plaintiff's net damages for which defendants Dulien are liable to plaintiff the sum of \$181,699.37 as of July 29, 1946.

### XXIX.

That on July 29, 1946, when the defendant Bank paid the money to Dulien, as herein elsewhere found, the plaintiff was damaged in the sum of \$214,000.00 by the act of the Bank in the payment of said money in violation of the contract between the plaintiff and defendant Bank, as herein elsewhere set forth. That the difference between the amount of \$214,000.00 paid out by the Bank contrary to the contract between the plaintiff and the Bank and the net amount of \$108,300.63 received by the plaintiff, as stated in paragraph XXVII hereof, upon the sales of wire made by him in his efforts to mitigate damages is \$105,699.37, as of July 29, 1946, which sum the Court finds is the plaintiff's net damage occasioned to him by the defendant Bank's breach of its contract with plaintiff. (See finding XXXIX.)

### XXX.

That said two shipments of approximately 3,800 tons of wire for which bills of lading LA 29 and LA 22 were issued and which were shipped on the S.S. White Squall were made up of rolls of several standard weights. That the majority of them were what were commonly known as 103-lb. rolls, sometimes called 100-lb. net rolls, but that there were an undetermined number of what were commonly



known as 56-lb. rolls, and an undetermined number of what were commonly known as 23-lb. rolls. That many of the records of deliveries of portions of said wire show only the number of rolls in a particular delivery without any language or other [287] indication from which can be determined either the apparent or the actual weight of such rolls, and in regard to many deliveries from the dock there are not available any scale records showing the actual weight of the rolls. That therefore there cannot be determined from the records available the exact weight of the wire unloaded from the White Squall at Long Beach; and for the same reason there cannot be determined the exact weight of the wire covered by bill of lading LA 29 which was made available to and delivered to plaintiff or to Gonzalez & Blanco, on its purchase from plaintiff, or to Dulien on its reservation of 300 tons. That the majority of the delivery records report the weight of the wire removed under bill of lading LA 29 as the weight calculated by multiplying the number of rolls appearing to be 23-lb. rolls by 23, multiplying the number of rolls appearing to be 56-lb. rolls by 56, and multiplying the number of rolls appearing to be 103-lb. rolls by 103, instead of the actual weight of each roll. That plaintiff's purchase order contract, as amended to reduce the amount of the order, called for 2,000 tons of barbed wire without reference to number of rolls or weight of individual rolls. That the wire removed by plaintiff and shipped to South America was actually weighed on scales and the actual weight was reported on the



delivery records. That the wire sold by plaintiff to Gonzalez & Blanco was sold by calculated weight upon the agreed assumption that each roll appearing to be a 23-lb. roll weighed 23 pounds, and that each roll appearing to be a 100-lb. roll weighed 100 pounds, and so on, without any actual weighing of said wire upon delivery to Gonzalez & Blanco. That by reason of the failure of all parties handling said wire except the plaintiff to make or keep accurate records of the exact weight of the wire and from all the evidence in the case the Court finds that the measure of damages and mitigation thereof is to be calculated in terms of dollars regardless of the actual weight in pounds or tons of wire. That it is immaterial whether plaintiff actually got [288] 2,000 tons of wire or 1,913.3325 tons of wire, or any intermediate amount, because the transaction was an entire transaction and plaintiff did everything he could do to obtain, and he did obtain, the highest available price and value for all the wire which he did get.

That the evidence preponderates to the effect, and the Court finds, that any discrepancies in the records between the number of rolls shown to have been loaded on the "White Squall" at Honolulu and the number shown to have been unloaded at Long Beach are relatively inconsequential in a 2300-ton shipment and therefore too small for the Court to take cognizance of; that any differences reported in said records between the weight of wire as mathematically calculated, as aforesaid, and the actual weight of the same wire as it might have been

determined by being weighed on scales is likewise inconsequential. Therefore the Court finds that there was no shortage in the carrier's delivery of wire at the dock at Long Beach, but that all the wire delivered to the carrier, United States of America, by Dulien at Honolulu under bill of lading LA 29 was delivered by the carrier at the dock at Long Beach for Dulien; that plaintiff has correctly reported by weight and in dollars all dispositions made by him or on his behalf of wire unloaded from the White Squall at Long Beach under bill of lading LA 29, as heretofore found in paragraph XXIV; that plaintiff fully preformed any and all duties which rested upon him to mitigate damages, and that upon the trial he fully and accurately reported all sales of wire made by him or on his behalf and all moneys received from such sales; that by way of credit to defendants Dulien and the Bank against moneys received by plaintiff from such sales in mitigation of damages plaintiff is properly chargeable with only such actual net amount of money as he did receive from such sales after the deduction of his necessary expenses; and that the net amount so received by him was [289] \$108,300.63.

### XXXI.

That at no time between July 29, 1946, and December 31, 1946, was there available to plaintiff in the State of California barbed wire of the type and quality which Dulien agreed to sell and warranted to plaintiff, which plaintiff could have obtained from any other source as a substitute for

that which Dulien had failed to deliver according to its warranty, and at all such times Dulien well knew that fact. That at the time of plaintiff's purchase of wire from Dulien plaintiff had no intention, nor any idea, of selling any of such wire in the United States of America, or in any of its Territories or possessions. That plaintiff's original and sole purpose in purchasing wire from Dulien was to ship it to his own country in South America (Colombia) for resale, and on July 11th and 12th, 1946, he so informed Dulien, and when Dulien accepted his order Dulien knew of plaintiff's said purpose and plan. That Dulien at all times in the years 1946 and 1947 knew the condition of the barbed wire market at Los Angeles and in the United States generally and in South America, and knew the demand for and the value of and market price of barbed wire and particularly of good non-rusty, merchantable barbed wire in ton lots for export at Los Angeles; that at all times on or between July 11th and July 29th, 1946, defendant Bank knew, but Dulien did not know, that plaintiff had a customer in Colombia ready, willing and able to pay plaintiff the market price for export at Los Angeles, to wit, \$160.00 per ton, for 1,000 tons of barbed wire of the quality ordered by plaintiff from Dulien and that said customer had made an advance payment to plaintiff of \$160,000.00 upon such purchase; but Dulien did at such times know that there was an export market in Los Angeles for good non-rusty, merchantable black and galvanized wire at prices



in excess of the price per ton which plaintiff agreed to pay Dulien as herein elsewhere found.

### XXXII.

That coincident with the letter of credit transaction the [290] Bank agreed to loan and did thereafter loan to plaintiff at his special instance and request the sum of \$54,535.00 and plaintiff orally agreed with the bank on July 27, 1946, to give the Bank as security for said loan a lien upon the wire for the purchase price of which the letter of credit was bought by plaintiff from the Bank and to evidence said loan and said lien by a promissory note. That plaintiff thereafter did give the Bank such a lien when on July 31, 1946, not knowing the bad condition of the wire or that the Bank had not obtained the required bill of lading thereon, and being then informed by the Bank that it had received the bill of lading in accordance with its contract and believing and relying thereon, he made, executed and delivered to the Bank his promissory note which was admitted in evidence as Exhibit 22-a and the collateral agreement which was admitted in evidence as Exhibit 21. That the Bank thereafter claimed, exercised and acted upon and under said note and collateral agreement when it authorized, instructed and required, and the Court finds that the Bank did authorize, instruct and require, that Mattoon & Company, the ocean freight forwarders handling the shipping arrangements and the documents on said wire, protect the Bank's interest in said wire by obtaining and transmitting direct to



the Bank the title papers on the wire thereafter to be shipped and which was shipped to South America by Mattoon & Company, and on that which was sold to Gonzales & Blanco in Los Angeles, pursuant to plaintiff's instructions. That \$54,000.00 of the amount so loaned to plaintiff was simultaneously on July 31, 1946, paid by plaintiff to the Bank in full discharge of the balance on the purchase price of said letter of credit, and the remaining \$535.00 thereof was simultaneously by plaintiff paid to the Bank in full payment of the Bank's letter of credit service charge. That the service for which said \$535.00 charge was made to plaintiff was not preformed, in that the plaintiff's instructions to the Bank contained in the letter of credit and the application therefor were not carried out, as aforesaid; and therefore the consideration for said service charge failed. That the amount of interest which has been charged by the [291] Bank upon plaintiff's said note as upon the \$535.00 portion of the principal to and including June 15, 1950, is \$103.63, and that the total of said \$535.00 principal and \$103.63 interest, amounting to \$638.63 is properly deducted from, and is not due or payable upon, plaintiff's said note. That after the deduction of said credit of \$638.63 the amount remaining unpaid on June 15, 1950, on the principal of said note was \$14,074.10 and on the interest \$2,812.10, and additional interest has since accrued on said principal balance at 5% per annum to November 16, 1950, amounting at \$58.64 per month to \$295.15, making a total of \$17,181.35 on said counterclaim,

and that after Nov. 16, 1950, additional interest will accrue on the principal at the rate of \$1.95 per day. That Mattoon and Company fully complied with the Bank's instructions for the protection of its lien on said wire, and in so doing acted as the agent of the Bank, and all of the money received from sales of said wire to Gonzalez & Blanco was transmitted direct to the Bank and by the Bank applied first upon expenses of such sales or charges against said wire and then upon plaintiff's said note, thereby reducing said note, and it was so reduced, to the balance above mentioned. That none of said wire was released to or for plaintiff or for sale or shipment by or for him except upon the authorization or consent of the Bank.

### XXXIII.

That it is not true that the provision on plaintiff's application for said letter of credit (Exhibit 4) providing that a negotiable order bill of lading be presented, endorsed in blank, was inserted in said application and said letter of credit at the sole instance and request of the Bank; but it is true that plaintiff requested and demanded the insertion of such provision and that the language of such provision was, by Wm. H. Schroeder, Vice President of the Bank, in the plaintiff's immediate presence and hearing on July 27, 1946, dictated to his (Schroeder's) secretary and that pursuant to such dictation said provision was written into said application. [292]

That it is not true that said last mentioned pro-

vision was inserted in each of said last mentioned documents for the sole benefit of said defendant Bank as a lien holder on said wire; but it is true that said provision was inserted both for plaintiff's protection against the possible payment of his money without the receipt of the specified documents and for the Bank's protection as a prospective lien holder on said wire. That it is not true that plaintiff released defendant Bank on July 29, 1946, or at any other time, from the provision of said application for letter of credit and of said letter of credit providing that a negotiable order bill of lading should be presented or from said provision of either of them; and it is not true that plaintiff orally or otherwise or at all agreed with defendant Bank that a straight non-negotiable bill of lading might be accepted or that the required bill of lading might show a consignment from Dulien to Dulien; and it is not true that the Bank on July 29th, 1946, (as is alleged by the Bank in paragraph 5 of the Second Defense contained in its Answer), or at any other time or at all, released plaintiff from the provisions of said application for letter of credit and of said letter of credit providing that a negotiable order bill of lading be presented or from said provision in either of said documents; and it is not true, as is in said allegation implied, that the Bank had any right to, or could, or did, alter or waive in any manner either the plaintiff's rights or privileges or the Bank's obligations and duties by the claimed "releasing" of the plaintiff therefrom, or otherwise, nor is it true that in any manner what-



ever plaintiff at any time, or at all, release the Bank from its obligation of full compliance with the requirements of the letter of credit and the application therefore or either of them.

#### XXXIV.

That it is not true that Mattoon & Company in its activities in connection with the barbed wire was acting as the agent solely of plaintiff; but it is true that Mattoon & Company was acting [293] as the Bank's agent regarding said wire while and so long as the Bank had a lien thereon and until from time to time portions of it were released by the Bank either for shipment to South America or for sale to Gonzalez & Blanco; that it is true that Mattoon & Company were independent ocean freight forwarders and shipping agents and that in the ordinary course of their business in this barbed wire transaction they from time to time preformed different duties for different principals, for the Bank at times and for the plaintiff at times, depending upon the particular service being at the moment performed.

#### XXXV.

That it is true that plaintiff in writing agreed with defendant Bank that the Bank should not be responsible for the character, quality, quantity, condition or value of the property represented by the documents required by the letter of credit or for any difference in character, quality, quantity, condition or value of the property from that to be expressed in the required documents, all as appears

in paragraph 9 of the letter of credit guarantee (Exhibit 5a); but such provision did not, and was never intended to, apply to the Bank's liability for, or in the event of, its failure to obtain the required documents; and the Court finds that the Bank deals in documents and not in merchandise and that such provision for exemption from liability was predicated and conditioned upon the receipt by the Bank of the precise documents called for by the letter of credit, and that when the Bank paid out plaintiff's \$214,000.00 without receiving such precise documents so required, such exemption provision did not relieve the Bank of its responsibility to plaintiff for the damage proximately caused to the plaintiff by breach of the Bank's letter of credit contract as herein elsewhere found, to wit, the sum of \$214,000.00 plus plaintiff's special damages of \$9,540.66 as found in paragraphs XXV and XXVI hereof less the sum of \$117,841.29 received by [294] plaintiff in mitigation of damages as found in paragraph XXIV hereof. The Court further finds that for the foregoing reasons the Bank did not warrant the condition of said wire and therefore the measure of plaintiff's damages against the Bank is thus different from and less than the measure of plaintiff's damage against Dulien, both as herein elsewhere found.

### XXXVI.

That the Bank's payment of Dulien's draft without obtaining the documents specified in and required by the letter of credit was a breach of

the contract between plaintiff and the Bank and was the result of carelessness and negligence on the part of the Bank all as herein elsewhere found. [295]

### XXXVII.

That there was a breach of warranty by Dulien Steel Products, Inc., of California, a California corporation, and by Dulien Steel Products Inc., a Washington corporation, and by each of them, as to the quality of the wire sold and delivered to plaintiff; that plaintiff suffered loss which in the ordinary course of events directly and naturally resulted from said breach of warranty, and plaintiff was damaged by said defendants Dulien and each of them by reason of said breach of warranty in the total sum of \$290,000.00 as of July 29, 1946, said sum being the value which said wire would have had to plaintiff if it had answered to the warranty made to plaintiff by said defendants Dulien, and in the additional sum of \$9,540.66 special damages arising from the special circumstances set forth in paragraphs XXV and XXVI, or a total of \$299,540.66. That from said total of \$299,540.66 defendants Dulien are entitled to have deducted the sum received by plaintiff in mitigation of damages from the sale of the wire actually delivered to him, to wit, \$117,841.29, which said sum of \$117,841.29 the Court also finds to be the value of the wire delivered to plaintiff at the times of delivery thereof to plaintiff; and that the amount of plaintiff's net loss and damage for which defendants Dulien are liable to plain-



tiff is the difference between those two amounts, to wit, \$181,699.37, as of July 29, 1946.

### XXXVIII.

That plaintiff is entitled to judgment against Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, and each of them in the sum of \$181,699.37, together with interest thereon at the rate of 7% per annum from July 29th, 1946 until the date of the signing of judgment herein, which total sum is \$236,355.51 on this date, viz. Nov. 16, 1950.

### XXXIX.

That there was a breach by the defendant Citizens National [296] Trust & Savings Bank of Los Angeles of its letter of credit contract with plaintiff; that plaintiff suffered loss which in the ordinary course of events directly and naturally resulted from said breach of contract by said defendant Bank; and that plaintiff was damaged by reason of said breach of contract by said defendant Bank in the sum of \$214,000.00 on July 29, 1946, and in addition thereto in the sum of \$9,540.66 as special damages arising from the special circumstances set forth in paragraphs XXV and XXVI, making a total of \$223,540.66, against which defendant Bank is entitled to a credit in diminution of damages in the amount of \$117,841.29 realized by plaintiff in mitigation of damages, leaving plaintiff's net damages against defendant Bank, before any credit to the

Bank on its counterclaim, in the sum of \$105,699.37 as of July 29, 1946; that plaintiff is entitled to interest on said sum of \$105,699.37 from July 29, 1946, until paid at the rate of seven (7%) per cent per annum, which total sum, together with interest, is \$137,494.23 on the date hereof viz. Nov. 16, 1950.

#### XI.

That on its counterclaim against plaintiff, on plaintiff's promissory note of July 31st, 1946, held by the Bank the defendant Bank is entitled to a credit on said judgment in plaintiff's favor in the amount of \$14,074.10 principal, plus interest of \$3,107.25 at 5% per annum to Nov. 16, 1950, totaling \$17,181.35; and that additional interest will accrue on said counterclaim from and after Nov. 16, 1950, at the rate of \$1.95 per day, until the date of the signing of judgment herein.

That after the deduction of said credit by way of counterclaim, to wit, the sum of \$17,181.35 to date hereof, from the total sum found in paragraph XXXIX, to wit, the sum of \$137,494.28 the net amount to which plaintiff is entitled to judgment against said defendant Bank as of the date of the signing hereof is \$120,312.88 (see computation made in accordance with [297] Local Rule 7 (h) attached hereto and to the judgment).

#### XII.

That as set forth in paragraphs XXXVIII and XXXIX of these Findings plaintiff is found to be entitled to interest at the statutory rate of 7% per annum from July 29, 1946, on \$181,699.37, [298]

the net amount of defendants Dulien's principal obligation, and on \$105,699.37, the net amount of defendant Bank's principal obligation, after crediting in each case the full amount of all monies received by plaintiff from the sales of the wire by him in mitigation of damages as of the dates of such sales as they are shown in paragraph XXIV hereof, the last of which said receipts was the interest of \$222.73 received from Gonzales & Blanco on May 23, 1947. That such credits are allowed as though the full amount of \$117,841.29 received from said sales had been received by plaintiff on July 29, 1946, whereas, as is shown in said paragraph XXIV hereof, the several items constituting and making up said total of \$117,841.29 were received from time to time between July 29, 1946, and May 23, 1947. That plaintiff is legally entitled to be charged back with those transactions and, by being charged back with all those receipts in mitigation as of July 29, 1946, he is deprived of \$1,273.18 interest to which he is legally entitled. That on the other hand, by being credited as of July 29, 1946, with the special expense items disbursed by him between July 29, 1946, and November 1, 1946, as in paragraph XXXVII hereof he is credited, he is given credit for interest on the several items making up that \$9,540.66 special expense total for a maximum period of time, as to some portions thereof, up to November 1, 1946, (see paragraph XXV, page 29, and paragraph XXVI, page 29, hereof), and the maximum excess interest for which he thus gets credit on said special expense disbursements is



\$158.01. That the difference between said two interest items is \$1,115.17 in plaintiff's favor, but the plaintiff does not press his claim for such additional interest, and therefore the Court, giving the advantage in that regard to said defendants, finds that plaintiff has waived his right to such favorable interest balance of \$1,115.17 and is therefore entitled to interest on the sum of \$181,699.37 only from July 29, 1946, as against defendants Dulien, and to interest on the sum of \$105,699.37 only from July 29, 1946, as against defendant Bank, as set forth in paragraphs XXXVIII and XXXIX hereof. [299]

#### XLII.

That plaintiff is not entitled to any relief against defendant Matson Navigation Company, and for that reason Matson Navigation Company is not entitled to any relief on its cross-complaint against Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., or either of them.

#### XLIII.

That the claim of defendant and cross-complainant Matson Navigation Company set up in its cross-complaint against defendants Dulien is a claim contingent upon the recovery of judgment by plaintiff against Matson; and recovery being herein denied to plaintiff as against Matson, Matson is not entitled to any relief against Dulien. However, if upon appeal judgment should be ordered in favor of plaintiff and against Matson, then and in that event Matson shall be entitled to judgment over

against Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., on Matson's cross-complaint against defendants Dulien in an amount equal to the amount so recovered by plaintiff against Matson.

#### XLIV.

That plaintiff did not at any time agree to accept or accept, or authorize or approve or ratify the acceptance by anyone on his behalf of, the freight bill (Exhibit 7) or any other freight bill or any other document in lieu or place or stead of the required bill of lading; nor did plaintiff at any time in any manner authorize, approve or ratify the waiver by the bank of, or failure of the bank to comply with, the requirements of said letter of credit or authorize, approve or ratify the bank's payment to Dulien without the receipt of each and all and every one of the documents required by said letter of credit.

#### XLV.

That Dulien's said representations made to plaintiff on July 11th and 12th, 1946, as to the condition and quality of the wire being sold to plaintiff, were false; that they were made by Dulien knowing them to be false, knowing that plaintiff believed [300] them to be true and intended to rely and act upon them, and intending that plaintiff should rely and act upon them. That plaintiff had a right to, and did, believe and rely and act upon said representations, and did so to his damage, as aforesaid. That on July 29, 1946, when Dulien presented its draft to the bank in the sum of \$214,000.00 for payment in

accordance with said letter of credit Dulien then knew that the documents presented did not comply with said letter of credit and Dulien then knew and also knew when accepting payment of said draft that it could not then or at any other time or at all comply with the terms of said letter of credit or the said contract between plaintiff and Dulien.

#### XLVI.

That plaintiff had had other letter of credit transactions with the bank prior to July 27, 1946, and the bank knew that his purpose in purchasing said wire from Dulien was to export it to South America, and knew that he had one South American commitment on 1,000 tons of wire at \$160.00 per ton (see finding XXIV).

#### XLVII.

That when Dulien accepted the said letter of credit from plaintiff and presented its \$214,000.00 draft to the bank with said letter of credit, and demanded payment thereof Dulien became and was bound to the bank by the terms of said letter of credit, and to plaintiff as part of the contract between plaintiff and Dulien.

#### XLVIIa.

That it was not impossible for the bank on July 29, 1946, to comply with the contract between plaintiff and the bank as it was the duty of the bank upon presentation of the draft without the required documents to dishonor and refuse to pay said draft and return plaintiff's \$214,000.00 to him.



## XLVIII.

That if the defendant bank had not violated its contract [301] and paid the \$214,000.00 to Dulien plaintiff would not have been damaged as the result of receiving bad wire from Dulien, and for that reason the equity is greater in favor of plaintiff being made whole by the full collection of the amount of his net damages against Dulien and the judgment therefor, with interest thereon until the date of full payment thereof, before defendant bank has the right of restitution by way of judgment over against Dulien. That therefore plaintiff is entitled to be made whole by the collection of the full amount of the judgment herein granted him against defendants Dulien before defendant bank be permitted to execute upon or in any other manner proceed against the assets of the defendants Dulien.

That defendant bank is entitled to judgment over against defendants Dulien for such sums of money as defendant bank may pay to plaintiff upon either of the judgments granted herein to plaintiff but will be entitled to execute on said judgment over only in the event and after plaintiff shall have received from defendants Dulien and defendant bank together sums of money aggregating the full amount of his judgment against defendants Dulien with interest thereon to the date of full payment thereof.

## XLIX.

That except as hereinafter stated plaintiff is entitled to collect under the judgments herein granted him the full sum of \$120,312.88 as of the date hereof,

viz. Nov. 16, 1950, and interest to the date of payment thereof, plus costs, from the defendant bank independent of and without regard to his right to collect from defendants Dulien the amount of his judgment against defendants Dulien; and except as hereinafter stated plaintiff is entitled to collect the full sum of \$236,355.51 as of the date hereof viz. Nov. 16, 1950, and interest to the date of payment hereof, plus costs, from defendants Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, independent of and without regard to his right to collect from defendant bank the amount of his judgment against defendant bank; and until [302] he has collected from said defendants Dulien and the defendant bank or from said defendants Dulien alone the full sum of \$236,355.51 as of the date hereof, viz. Nov. 16, 1950, and costs, plus interest to the date of full payment thereof, the fact that he has a judgment against each of said defendants shall not, except as hereinafter stated, be a bar to his collection from the other of them of any balance which may be due on the judgment against such other; but plaintiff is not entitled in any event to collect on the judgments herein granted him against defendants Dulien and defendant bank any more in the aggregate than a sum equal to the full amount of the larger of the said judgments, to wit, \$236,355.51 the amount of the judgment against defendants Dulien, plus costs, with interest thereon to the date of full payment thereof. [303]

## L.

The difference between the \$236,355.51 to which plaintiff is entitled as against defendants Dulien and the \$17,181.35 balance now remaining unpaid to defendant bank on plaintiff's said promissory note of July 31, 1946, is \$219,174.16. In the calculation of the amount to which plaintiff is entitled as against defendant bank there has been deducted, as above stated in Paragraph XL hereof, the amount now remaining unpaid on plaintiff's said note; but in the calculation of the amount to which plaintiff is entitled as against defendants Dulien no such deduction has been made because defendants Dulien are not entitled to any such credit; but if plaintiff collects from defendants Dulien the amount of said balance on his said note to the bank or any portion thereof after having been otherwise made whole as to everything to which he is entitled from defendants Dulien except the balance remaining unpaid on said note, to wit, except the last \$17,181.35 and interest on said note, then and then only will the bank be entitled to reimbursement by plaintiff on account of said note for any such actual recovery by plaintiff from defendants Dulien; and therefore the Court further finds that upon the collection by plaintiff of all or any portion of the last \$17,181.35 principal of said \$236,355.51 judgment against defendants Dulien the bank shall be entitled to be reimbursed by plaintiff to the extent of such collection, together with such interest thereon, up to but not exceeding 5% per annum, as plaintiff may collect thereon from defendants Dulien.



## Conclusions of Law

From the foregoing facts the Court concludes:

## I.

That many of the questions necessary to be determined are mixed questions of law and fact and for the purpose of clarity many conclusions of law are stated in the Findings of Fact, and for that reason all the conclusions of law which may appear in the Findings of Fact, whether herein specifically stated again or not, are hereby stated as conclusions of law.

## II.

That there was a breach of warranty by Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, and each of them as to the quality of the wire sold and delivered to plaintiff.

[In margin]: Amended to add a paragraph purs. order filed and entered 12/7/50 in Judg. Bk. 69/502.

/s/ PH.

## III.

That plaintiff is entitled to judgment against Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., and each of them, in the sum of \$181,699.27 plus interest thereon at the rate of seven (7%) per cent per annum from July 29, 1946, to the date hereof, viz. Nov. 16, 1950, to wit, the total of \$236,355.51. (See Computation made in accordance with Local Rule 7(h) attached hereto and to the judgment herein).

## IV.

That as set forth in paragraphs XXXVIII and XXXIX of the Findings of Fact plaintiff is entitled to interest at the statutory rate of seven (7%) per cent per annum from July 29, 1946, on \$181,-699.37, the net amount of defendants Dulien's principal obligation, and on \$105,699.37, the net amount of defendant bank's principal obligation, after crediting in each case the full amount of all monies received by plaintiff from the sales of the wire by him in mitigation of damages as of the dates of such sales as they are shown in paragraph XXIV hereof, the last of which said receipts was the interest of \$222.73 received from Gonzalez & [304] Blanco on May 23, 1947. That such credits are allowed as though the full amount of \$117,841.29 received from said sales had been received by plaintiff on July 29, 1946, whereas, as is shown in said paragraph XXIV of the Findings of Fact, the several items constituting and making up said total of \$117,841.29 were received [305] from time to time between July 29, 1946, and May 23, 1947. That plaintiff is legally entitled to be charged back with those transactions as of the dates when they occurred and, by being charged back with all those receipts in mitigation as of July 29, 1946, he is deprived of \$1,273.18 interest to which he is legally entitled. That on the other hand, by being credited as of July 29, 1946, with the special expense items disbursed by him between July 29, 1946, and November 1, 1946, as in paragraph XXXVII of the Findings of Fact he is credited, he is given credit for interest on the several items

making up that \$9,540.66 special expense total for a maximum period of time, as to some portions thereof, up to November 1, 1946, and the maximum excess interest for which he thus gets credit on said special expense disbursements is \$158.01. That the difference between said two interest items is \$1,115.17 in plaintiff's favor. That the plaintiff having not pressed his claim for such additional interest, has waived his right to such favorable interest balance of \$1,115.17 and is therefore entitled to interest on the sum of \$181,699.37 only from July 29, 1946, as against defendants Dulien, and to interest on the sum of \$105,699.37 only from July 29, 1946, as against defendant bank, as in paragraphs XXXVIII and XXXIX of the Findings of Fact set forth.

#### V.

That the bank breached its letter of credit contract with plaintiff when on July 29, 1946, it paid out to Dulien plaintiff's \$214,000.00 without obtaining the required documents, particularly the required bill of lading. By reason of said breach of contract plaintiff is entitled to recover from defendant bank, for general and special damages as set forth in paragraph XXXIX of the Findings of Fact, the total sum of \$223,540.66 less \$117,841.29 by way of off-set in mitigation and diminution of damages to which defendant bank is entitled, that is, he is entitled to recover \$105,699.37 as of July 29, 1946, plus interest thereon at the rate of seven [306] (7%) per cent per annum from July 29, 1946, to the date hereof, against which the bank is further entitled



to a credit, by way of its counterclaim on plaintiff's note to the bank, in the sum of \$14,074.10 plus interest thereon at five (5%) per cent per annum from July 31, 1946; so that plaintiff is now entitled to judgment as of the date of the signing hereof viz. Nov. 16, 1950, in the sum of \$120,312.88. (See computation in accordance with local rule 7(h) attached hereto and to the judgment herein.)

## VI.

That by reason of the failure of the bank to perform its letter of credit contract with plaintiff the bank is not entitled to recover from plaintiff anything by way of attorney's fees on plaintiff's said promissory note, either as a credit against the bank's obligation to plaintiff in damages or on the bank's counterclaim on said note or otherwise or at all.

## VII.

That except as hereinafter conditionally provided the bank is not entitled to any relief from plaintiff on the bank's cross-complaint on plaintiff's promissory note. That in the calculation of plaintiff's damages against the bank, there has been fully allowed as a credit, by way of the bank's counterclaim, the amount remaining unpaid on plaintiff's said note with interest thereon to the date of signing of the judgment herein.

## VIII.

That it was not impossible for the bank on July 29, 1946, to comply with the contract between plaintiff and the bank as it was the duty of the bank upon

presentation of the draft without the required documents to dishonor and refuse to pay said draft and return plaintiff's \$214,000.00 to him.

### IX.

That the public has an interest in the proper performance by banks of their usual banking activities. That the issuance, sale and negotiation of letters of credit and the performance of [307] bank's contracts made in connection therewith are matters of general public interest, and the issuance, sale and negotiation of the letter of credit purchased by plaintiff from the bank in this case fall within that category. That the language of paragraph 9 of the letter of credit guarantee (Exhibit 5a) is not subject to the interpretation claimed for it by the bank in paragraph 7 of the bank's Second Defense of its Answer. That as so sought by the bank to be interpreted such paragraph is contrary to public policy and would therefore render such contract null and void. That insofar as any of the language of the application for letter of credit (Exhibit 4) purports to absolve the bank from liability for its own negligence, and particularly from liability for failure to obtain the very document which by purchasing the letter of credit the plaintiff employed the bank to obtain, or to limit such liability, it was and is against public policy and therefore null and void.

### X.

That if defendant bank had not breached its contract and paid the \$214,000.00 to Dulien plaintiff

would not have been damaged as the result of receiving bad wire from Dulien, and for that reason the equity is greater in favor of plaintiff being made whole by the full collection of the amount of his net damages against Dulien and the judgment therefor before defendant bank has the right of restitution by way of judgment over against Dulien. That therefore plaintiff is entitled to be made whole by the collection of the full amount of the judgment herein granted him against defendants Dulien before defendant bank be permitted to execute upon or in any other manner proceed against the assets of defendants Dulien.

That by reason of the fact that Dulien accepted payment of \$214,000.00 under a letter of credit with whose terms it knew it was not complying and could not comply and by further reason of the fact that Dulien at the time of accepting payment knew it could not [308] comply with the contract between plaintiff and Dulien, defendant bank is entitled to judgment over against defendants Dulien for such sums of money as defendant bank may pay to plaintiff hereunder, but will be entitled to execute on said judgment over only in the event and after plaintiff shall have been paid by defendants Dulien and defendant bank together sums of money aggregating the full amount of his judgment against defendants Dulien with interest thereon to the date of full payment thereof.

## XI.

That plaintiff is not entitled to any relief whatsoever upon its claim against Matson Navigation



Company, and Matson is entitled to a judgment of dismissal on the merits against plaintiff, but should pay its own costs.

## XII.

That Section 22 of the Pomerene Act (Title 46 USCA Sec. 102) imposed an obligation on the United States of America as owner of the S.S. White Squall and as the carrier and on Matson as its berth agent, to insert exceptions in bill of lading LA 29, noting the apparent rusty condition of the wire covered thereby, but Matson was excused and relieved from the performance of said duty by the acts and conduct of defendants Dulien. That because neither the plaintiff nor the bank received or relied upon bill of lading LA 29 or gave value in good faith relying upon the description of the barbed wire contained in said bill of lading LA 29 neither of them was damaged by reason of the failure of Matson and its said principals to note exceptions therein, and therefore neither plaintiff nor the bank is entitled to any relief as against Matson Navigation Company. That any right of the plaintiff to recover from defendants Matson and the United States of America, or either of them, for failure to note exceptions in said bill of lading LA 29 was subject to the equities which existed between the parties to the said bill of lading, that is, defendants [309] Dulien, the shipper, on the one hand and defendant Matson and Respondent United States of America on the other. That such equities preponderate in favor of the defendant Matson and Respondent United States of America and against defendants

Dulien and thus against plaintiff. That Matson at all times herein concerned was acting solely as an agent of the United States of America and all parties to this action were at all times charged with notice thereof.

### XIII.

That the claim of defendant and cross-complainant Matson Navigation Company set up in its cross-complaint against defendants Dulien is a claim contingent upon the recovery of judgment by plaintiff against Matson; and recovery being herein denied to plaintiff as against Matson, Matson is not entitled to any relief against Dulien. However, if upon appeal judgment should be ordered in favor of plaintiff and against Matson, then and in that event Matson shall be entitled upon satisfaction thereof to judgment over against Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., on Matson's cross-complaint against defendants Dulien in an amount equal to the amount so recovered by plaintiff against Matson, subject to the same conditions as are set forth in the bank's judgment over against Dulien, as set forth in paragraph X of these conclusions.

### XIV.

That defendant and cross-complainant Citizens National Trust & Savings Bank of Los Angeles is not entitled to any relief against defendant and cross-defendant Matson Navigation Company.

### XV.

That except as hereinafter stated plaintiff is en-

titled to collect under the judgments herein granted him the full sum of \$120,312.88 as of the date hereof viz. Nov. 16, 1950, plus costs, and interest to the date of payment thereof, from the defendant bank independent of and without regard to his right to collect from [310] defendants Dulien the amount of his judgment against defendants Dulien; and except as hereinafter stated plaintiff is entitled to collect the full sum of \$236,355.51 as of the date hereof, viz. Nov. 16, 1950, plus costs, and interest thereon to the date of payment thereof, from defendants Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, independent of and without regard to his right to collect from defendant bank the amount of his judgment against defendant bank; and until he has collected from said defendants Dulien and the defendant bank or from said defendants Dulien alone the full sum of \$236,355.51 as of the date hereof viz. Nov. 16, 1950, plus costs, and interest to the date of full payment thereof, the fact that he has a judgment against each of said defendants shall not, except as hereinafter stated, be a bar to his collection from the other of them of any balance which may be due on the judgment against such other; but plaintiff is not entitled in any event to collect on the judgments herein granted to him against defendants Dulien and defendant bank any more in the aggregate than a sum equal to the full amount of the larger of the said judgments, to wit, \$236,355.51 as of the date hereof viz. Nov. 16, 1950, the amount of the judgment against de-



endants Dulien, plus costs, with interest thereon to the date of full payment thereof.

### XVI.

That if, after having been otherwise made whole as to everything to which plaintiff is entitled from defendants Dulien except a sum equal to the balance remaining unpaid on his note to defendant bank, to wit, except \$17,181.35 plus interest on said note, plaintiff collects from defendants Dulien all or any portion of said last \$17,181.35 principal of the amount of said \$236,355.51 judgment against defendants Dulien, then and then only will the bank be entitled to any reimbursement from plaintiff on account of said note for any of plaintiff's actual recovery from defendants Dulien; but upon the collection by plaintiff of all or any portion of said last \$17,181.35 principal of his said \$236,355.51 judgment against defendants Dulien the bank shall be entitled to be forthwith reimbursed by plaintiff to the extent of such collection, together with such interest thereon, up to but not to exceed 5% per annum, as plaintiff may collect thereon from defendants Dulien.

Let Judgment Be Entered Accordingly.

Dated Nov. 16, 1950.

/s/ PEIRSON M. HALL,  
Judge. [311]

## PLAINTIFF'S COMPUTATION OF INTEREST ON JUDGMENT

1. Against Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation :

Principal amount of judgment as announced by the Court on June 16, 1950, and as found in paragraph XXXVII of the Findings of Fact.....\$181,699.37

Interest thereon at 7% per annum from July 29, 1946, to and including Nov. 15, 1950 (4 yrs., 3 months, and 16 days)

@ \$12,718.95 per year

1,059.91 per month and

35.33 per day ..... 54,620.81

Total principal and interest to and including  
Nov. 15, 1950 .....\$236,320.18

If the judgment be signed after November 15, 1950, the interest will be increased in the amount of \$35.33 per day.

2. Against Citizens National Trust & Savings Bank :

Principal amount of judgment as announced  
by the Court June 16, 1950.....\$105,699.37

Interest thereon at 7% per annum from July 29, 1946, to and including Nov. 15, 1950 (4 yrs., 3 months, 16 days)

@ \$7,398.95 per year

616.57 per month and

20.55 per day ..... 31,774.31

Total principal and interest due plaintiff as of  
Nov. 15, 1950, before credit for counterclaim on  
plaintiff's note .....\$137,473.68

Deduct Bank's Counterclaim :

Principal on plaintiff's note held by bank as  
erroneously reported to court at time judgment  
was ordered .....\$14,609.10

Less error caused by inclusion in  
note of disallowed \$535.00 letter of  
credit service charge ..... 535.00

Corrected principal balance.....\$14,074.10

Interest on note held by bank as  
erroneously reported at time judgment  
was ordered .....\$2,915.73

Less error by inclusion  
of interest on the \$535.00  
service charge ..... 103.63

Corrected interest on note as of	
June 15, 1950 .....	2,812.10
Additional interest to Nov. 15 @	
\$58.64 per month .....	293.20

Total credit on counterclaim as of	
November 15, 1950 .....	17,179.40

Amount of judgment against bank 11-15-50.....	\$120,294.28
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If judgment is not signed until after November 15, 1950, then there should be added to the above stated Nov. 15, 1950, judgment figure the sum of \$18.60 per day for each additional day, arrived at as follows:

Difference between:	
7% on \$105,699.37 per day.....	\$20.55
and 5% on \$14,074.10 per day.....	1.95
Net daily increase in plaintiff's favor.....	\$18.60

[Endorsed]: Filed November 16, 1950.

[As corrected by order of District Court dated July 5, 1951.] [314]



In the District Court of the United States, Southern  
District of California, Central Division

No. 7358-PH

J. B. LONDONO,

Plaintiff,

vs.

DULIEN STEEL PRODUCTS, INC., OF CALI-  
FORNIA, a Corporation; DULIEN STEEL  
PRODUCTS, INC., a Corporation; CITI-  
ZENS NATIONAL TRUST & SAVINGS  
BANK OF LOS ANGELES, a National Bank-  
ing Association, and MATSON NAVIGA-  
TION COMPANY, a Corporation,

Defendants.

### JUDGMENT\*

This cause coming on regularly for trial the 18th day of April, 1950, before the above-entitled court, the Honorable Peirson M. Hall, Judge, presiding, in consolidation for trial with Suit in Admiralty No. 8482-PH entitled J. B. Londono, Libelant, vs. United States of America, United States Maritime Commission and War Shipping Administration, Respondents, before the Court without a jury, a jury having been specifically waived by all the parties

EDMUND S. SMITH,  
Clerk.

By /s/ C. A. SIMMONS,  
Deputy Clerk.

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\*[In margin]: Amended nunc pro tunc as of 11/16/50, by order filed 11/28/50, and entered 11/29/50 in JBk 69/399.

hereto; Thomas S. Bunn, appearing as counsel for plaintiff and cross-defendant, J. B. Londono, and for libellant, J. B. Londono; Joseph H. Dasteel, appearing as counsel for defendants, cross-complainants and cross-defendants, Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, hereinafter collectively referred [315] to as Dulien; Cosgrove, Cramer, Diether & Rindge, by Leonard A. Diether and Jesse R. O'Malley, appearing as counsel for defendant and cross-complainant Citizens National Trust & Savings Bank of Los Angeles, hereinafter referred to as the Bank; Brobeck, Phleger & Harrison, by Alan W. Aldwell, and Morrow & Trippet, by Hubert T. Morrow, John C. Morrow and Thomas F. Hetherington, appearing as counsel for defendant and cross-complainant Matson Navigation Company, hereinafter referred to as Matson; and Ernest A. Tolin, United States Attorney, by Bernard B. Laven, Assistant United States Attorney, appearing as counsel for respondents, United States of America, United States Maritime Commission and War Shipping Administration, in consolidated Suit in Admiralty No. 8482-PH; Answers having been filed by all defendants and respondents; cross-complaints having been filed by the bank against plaintiff, Dulien and Matson and by Matson against Dulien, all of said cross-complaints being by stipulation deemed denied by the respective cross-defendants; the bank's original answer having been prior to the trial by permission of the Court amended by its First and Second Amendments, and

the plaintiff during the course of the trial being permitted to amend his complaint by his First and Second Amendments thereto, filed herein on May 31, 1950, and June 14, 1950, respectively, and all references herein to the said complaint and said answer of the bank being to said complaint and said answer as amended; the trial having continued from day to day to and including June 16, 1950, and oral and documentary evidence having been introduced on behalf of all parties hereto; and the Court having announced its decision from the bench on June 16, 1950, and having directed the preparation of Findings of Fact, Conclusions of Law and Judgment herein; and plaintiff having thereafter on the 21st day of July, 1950, originally submitted proposed Findings of Fact, Conclusions of Law and Judgment, to which written objections were filed by the several defendants, and a three day hearing, upon due notice to all parties, having [316] been held by the Court upon said objections on September 28th, 29th and 30th, 1950, at which hearing all parties were represented; and the plaintiff having thereafter re-submitted Findings of Fact, Conclusions of Law and Judgment in accordance with direction of the Court at the conclusion of said hearings, to which objections were filed and on which objections another duly noticed hearing was held by the Court on November 2nd, 1950, at which hearing all parties were represented; and the Court being fully advised in the premises and having filed herein its Findings of Fact and Conclusions of Law and having directed that judgment be entered in accordance therewith,



Now, Therefore, by reason of the law and the findings aforesaid, [317]

It Is Ordered, Adjudged and Decreed:

I.

That plaintiff have judgment for damages against defendants Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, and each of them, in the sum of \$236,355.51 together with his costs herein incurred in the amount of \$755.10, and interest thereon at the rate of 7% per annum until paid.

II.

That plaintiff have judgment for damages against defendant Citizens National Trust & Savings Bank of Los Angeles in the sum of \$120,312.88 together with his costs incurred herein in the amount of \$747.05, and interest thereon at the rate of 7% per annum until paid.

III.

That plaintiff is not entitled to any relief against defendant, Matson Navigation Company; plaintiff shall take nothing against defendant, Matson Navigation Company, on his action herein and said action shall be and the same hereby is dismissed on the merits as to said defendant, and defendant, Matson Navigation Company shall pay its own costs.

IV.

That except as hereinafter conditionally provided defendant and cross-complainant, Citizens National

Trust & Savings Bank of Los Angeles, is not entitled to any relief against plaintiff and cross-defendant, J. B. Londono.

V.

That defendant and cross-complainant, Citizens National Trust & Savings Bank of Los Angeles, is not entitled to any relief against defendant and cross-defendant, Matson Navigation Company and shall take nothing on its cross-complaint against defendant and cross-defendant, Matson Navigation Company herein; said cross-complaint shall be and the same hereby is dismissed on the merits. [318]

VI.

That plaintiff's action against defendant, Matson Navigation Company, and the cross-complaint of defendant and cross-complainant, Citizens National Trust & Savings Bank of Los Angeles, against defendant and cross-defendant, Matson Navigation Company, having been dismissed on the merits, defendant and cross-complainant, Matson Navigation Company, is not entitled to any relief on its cross-complaint against defendants, Dulien Steel Products, Inc., of California, a California corporation, or Dulien Steel Products, Inc., a Washington corporation.

VII.

That the claim of defendant and cross-complainant, Matson Navigation Company set up in its cross-complaint against defendants, Dulien, is a claim contingent upon the recovery of judgment by plaintiff against Matson Navigation Company, and re-

covery being herein denied to plaintiff as against Matson, Matson is not entitled to any relief against defendants, Dulien. However, if upon appeal judgment should be ordered in favor of plaintiff and against Matson then and in that event Matson Navigation Company shall be entitled to judgment over against Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, on Matson's cross-complaint against defendants, Dulien, in an amount equal to the amount so recovered by plaintiff against Matson Navigation Company.

#### VIII.

That all sums of money paid by the defendant, Citizens National Trust & Savings Bank of Los Angeles shall be credited only upon the judgment herein ordered against said defendant bank. That all sums of money paid by defendants, Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, or either of them, shall be credited only upon the judgment herein ordered [319] against said defendants, Dulien. That after plaintiff shall have collected hereunder from said defendants, Dulien, and said defendant bank sums aggregating and equal to the amount of the judgment herein against said defendants, Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products Inc., a Washington corporation, and interest thereon up to the date of full payment thereof, then and then only shall defendant, Citizens National



Trust & Savings Bank of Los Angeles have, and said defendant bank is in that event hereby given, judgment over against said defendants, Dulien, for such amounts of money as said defendant bank shall have paid to plaintiff upon plaintiff's judgment against said defendant bank; but until that time said defendant bank shall not be entitled to levy execution upon, or in any other manner proceed against, the assets of said defendants, Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, or either of them, for the purpose of collecting upon this judgment over.

#### IX.

That, except as hereinafter stated, plaintiff is entitled to collect hereunder the full sum of \$120,-312.88 plus costs, with interest thereon as herein above set forth from the defendant, Citizens National Trust & Savings Bank of Los Angeles, independent of and without regard to his right to collect from defendants, Dulien, the amount of his judgment against defendants, Dulien; and, except as hereinafter stated, plaintiff is entitled to collect the full sum of \$236,355.51, plus costs, with interest thereon as herein above set forth from defendants, Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, independent of and without regard to his right to collect from defendant bank the amount of his judgment against said defendant bank; and until he has collected from said

defendants, Dulien and the defendant bank or from said defendants, Dulien, alone the full sum of \$236,355.51, plus costs, [320] with interest to the date of full payment thereof, the fact that he has a judgment against each of said defendants shall not, except as hereinafter stated, be a bar to his collection from the other of them of any balance which may be due on the judgment against such other; but plaintiff is not entitled to collect in any event on the judgments herein granted him against defendants, Dulien, and defendant bank any more in the aggregate than a sum equal to the full amount of the larger of the said judgments, to wit, \$236,355.51 the amount of the judgment against defendants, Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, plus costs, with interest thereon to the date of full payment thereof; and when plaintiff shall have received such payment in full by whomsoever or whichever of said defendants paid, plaintiff's rights hereunder shall cease and terminate and insofar as plaintiff is concerned this judgment shall be fully satisfied.

### X.

That if, after having been otherwise made whole as to everything to which plaintiff is entitled from defendants, Dulien, except a sum equal to the balance remaining unpaid on his note to defendant bank, to wit, except \$17,181.35 principal plus interest on said note, plaintiff collects from defendants, Dulien, all or any portion of said last \$17,181.35 principal of the amount of said \$236,355.51 judgment against

defendants, Dulien, then and then only shall the bank be entitled to any reimbursement from plaintiff on account of said note for any of plaintiff's actual recovery from defendants, Dulien; but upon the collection by plaintiff of all or any portion of said last \$17,181.35 principal of his \$236,355.51 judgment against defendants, Dulien, the Citizens National Trust & Savings Bank of Los Angeles shall be forthwith reimbursed by plaintiff to the extent of such collection, together with such interest thereon, up to but not to exceed 5% per annum, as plaintiff may collect thereon from defendants, Dulien.

Dated November 16th, 1950.

/s/ PEIRSON M. HALL,  
Judge. [321]

[Endorsed]: Filed November 16, 1950.

Judgment entered Nov. 17, 1950.

As corrected by order of District Court dated July 5, 1951. [324]

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[Title of District Court and Cause.]

MOTION TO AMEND FINDINGS, MAKE  
ADDITIONAL FINDINGS AND CONCLU-  
SIONS OF LAW AND AMEND JUDGMENT  
ACCORDINGLY

Comes Now the plaintiff and moves the above-entitled court for an order amending the Findings of Fact, Conclusions of Law and Judgment hereto-



fore entered herein within ten days immediately prior to the date hereof, to wit, on November 17th, 1950, in Book 69, Page 248 of Judgments, as follows:

1. To add to paragraph II of the Conclusions of Law on page 47, the following separate unnumbered paragraph:

“That said acts of Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, and each of them, set forth in the foregoing Findings of Fact, and particularly in paragraphs V, XXXVII [325] and XLV thereof, were and constituted a fraud upon plaintiff herein.”

This motion is based upon the pleadings, papers, records and filed in this action, upon Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure, and particularly upon the fact that in paragraph XLV of the Findings of Fact all the elements of fraud are found but there was no specific Conclusion of Law made by the Court on said matter of fraud as such, and upon notice served concurrently herewith.

Dated this 27th day of November, 1950.

/s/ THOMAS S. BUNN,  
Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed November 27, 1950. [326]

[Title of District Court and Cause.]

ORDER CORRECTING JUDGMENT NUNC  
PRO TUNC ON THE COURT'S OWN  
MOTION

On hearing of motion for stay of execution and to fix the amount of the supersedeas bonds, it was called to the Court's attention that through oversight there was omitted from the judgment the conditions of a contingent judgment-over against defendants Dulien in favor of Matson Navigation Company, as set forth in the Conclusions of Law in paragraph XIII of such conclusions.

Now, on the Court's own motion, it is hereby ordered that such omission be and is hereby corrected nunc pro tunc as of November 16, 1950, by striking the period at the end of paragraph VII of said judgment and inserting a comma in place and instead of such period and by inserting after said comma the following language, viz.: [327]

“subject to the same conditions as are set forth in the bank's judgment-over against defendants Dulien as set forth in paragraph VIII hereof.”

and by inserting in paragraph VII, page 4, line 20 of the Judgment the words “upon satisfaction thereof” between the word “shall” and the word “be,” so that paragraph VII of said judgment in its entirety reads as follows, viz.:

“That the claim of defendant and cross-complainant, Matson Navigation Company, set up in its cross-complaint against defendants,

Dulien, is a claim contingent upon the recovery of judgment by plaintiff against Matson Navigation Company, and recovery being herein denied to plaintiff as against Matson, Matson is not entitled to any relief against defendants, Dulien. However, if upon appeal judgment should be ordered in favor of plaintiff and against Matson then and in that event Matson Navigation Company shall upon satisfaction thereof be entitled to judgment over against Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, on Matson's cross-complaint against defendants, Dulien, in an amount equal to the amount so recovered by plaintiff against Matson Navigation Company, subject to the same conditions as are set forth in the bank's judgment-over against defendants, Dulien, as set forth in paragraph VIII hereof."

The Clerk is hereby ordered and directed to enter the above correction of judgment nunc pro tunc as of the date of entry of the judgment herein, to wit, November 17, 1950.

Dated November 28, 1950.

/s/ PEIRSON M. HALL,  
Judge.

Receipt of copy acknowledged.

Order entered Nov. 29, 1950.

[Endorsed]: Filed November 28, 1950. [328]



[Title of District Court and Cause.]

ORDER AMENDING FINDINGS OF FACT  
AND CONCLUSIONS OF LAW NUNC PRO  
TUNC ON PLAINTIFF'S MOTION

On motion of plaintiff, by Thomas S. Bunn, his attorney, duly made before this Court within the time allowed by law and the Federal Rules of Civil Procedure applicable to such cases, to wit, on Monday, the 27th day of November, 1950, and coming on regularly for hearing this 7th day of December, 1950, at the hour of 10:00 o'clock a.m., Hon. Peirson M. Hall, Judge, presiding, all parties being present or having been duly notified of the time and place of hearing,

It Is Hereby Ordered that the findings of fact and conclusions of law heretofore signed and filed herein on November 16, 1950, and entered herein on November 17, 1950, are hereby amended nunc pro tunc as of November 16, 1950, by adding to paragraph II [332] of the conclusions of law on page 47 the following separate unnumbered paragraph:

“That said acts of Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington Corporation, and each of them, set forth in the foregoing findings of fact and particularly paragraphs V, XXXVII and XLV thereof were and constituted a fraud upon plaintiff herein.”

The Clerk is hereby ordered and directed to enter the above amendment of findings of fact and con-

clusions of law nunc pro tunc as of the date of entry of judgment herein, to wit, November 17, 1950.

Dated this 7th day of December, 1950.

/s/ PEIRSON M. HALL,  
Judge.

Receipt of copy acknowledged.

Order entered Dec. 7, 1950.

[Endorsed]: Filed December 7, 1950. [333]

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[Title of District Court and Cause.]

NOTICE OF APPEAL OF THE DEFENDANT  
AND CROSS-COMPLAINANT, CITIZENS  
NATIONAL TRUST & SAVINGS BANK OF  
LOS ANGELES TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT UNDER RULE 73(b)

Notice is hereby given that the defendant and cross-complainant Citizens National Trust & Savings Bank of Los Angeles, one of the defendants above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the following portions of the Final Judgment entered in this action on November 17, 1950, to wit:

1. All of Paragraph II of said judgment wherein judgment in the sum of \$120,312.88, together with costs and interest, is rendered in favor of plaintiff and against said bank.

2. All of Paragraph IV of said judgment wherein it is adjudged that defendant and cross-complainant Bank is not entitled [337] to any relief against plaintiff and cross-defendant.

3. That part of Paragraph VIII of said judgment reading as follows:

“That all sums of money paid by defendants Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, or either of them, shall be credited only upon the judgment herein ordered against said defendants Dulien.”

4. Those portions of Paragraph IX of said judgment reading as follows:

“That, except as hereinafter stated, plaintiff is entitled to collect hereunder the full sum of \$120,312.88 plus costs, with interest thereon as herein above set forth from the defendant Citizens National Trust & Savings Bank of Los Angeles independent of and without regard to his right to collect from defendants Dulien the amount of his judgment against defendants Dulien;”

“\* \* \* and until he [plaintiff] has collected from said defendants Dulien and the defendant bank or from said defendants Dulien alone the full sum of \$236,355.51, plus costs, with interest to the date of full payment thereof, the fact that he has a judgment against each of said



defendants shall not, except as hereinafter stated, be a bar to his collection from the other [338] of them of any balance which may be due on the judgment against such other;”.

Dated December 12, 1950.

COSGROVE, CRAMER,  
DIETHER & RINDGE,

By /s/ LEONARD A. DIETHER,  
Attorneys for Defendant and Cross-Complainant,  
Citizens National Trust & Savings Bank of Los  
Angeles.

[Endorsed]: Filed December 12, 1950. [339]

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[Title of District Court and Cause.]

NOTICE OF APPEAL BY DULIEN STEEL  
PRODUCTS, INC., OF CALIFORNIA, A  
CALIFORNIA CORPORATION, AND DU-  
LIEN STEEL PRODUCTS, INC., A WASH-  
INGTON CORPORATION

Notice Is Hereby Given that Dulien Steel Prod-  
ucts, Inc., of California, a California corporation,  
and Dulien Steel Products, Inc., a Washington cor-  
poration, defendants and parties above named, and  
each of them, hereby appeal to the Circuit Court of  
Appeals for the Ninth Circuit, from the final judg-  
ment entered in this action on November 17, 1950, as

amended by orders entered November 29, 1950, and December 7, 1950.

Dated this 11th day of December, 1950.

/s/ JOSEPH H. DASTEEL,

PRESTON, THORGRIMSON &  
HOROWITZ,

By /s/ CHARLES HOROWITZ,

Attorneys for Said  
Defendants.

[Endorsed]: Filed December 12, 1950. [340]

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[Title of District Court and Cause.]

### DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Dulien Steel Products, Inc., of California, a corporation, and Dulien Steel Products, Inc., a corporation, hereby designate the following requirements for their record on appeal under Rule 75 of Rules of Procedure:

1. All evidence and proceedings at the trial which were stenographically reported including the opening statements of counsel, the judge's remarks and decision at the close of the trial and the judge's remarks and decision on September 28, 1950, with respect to the said defendant Bank's cross-complaint against Dulien, but excepting all proceedings for the settlement of the Findings of Fact and Con-

clusions of Law and the [345] form of judgment, except that portion thereof with respect to Dulien's motion to strike a proposed finding of fraud contained in plaintiff's proposed Conclusions of Law, the judge's remarks and decision [346] thereon having taken place on the 29th day of September, 1950, and the judge's remarks and decision on plaintiff's motion to amend Conclusions having taken place on the 7th day of Dec., 1950.

1. A Complaint. Filed July 17, 1947.
2. Amendment to complaint (to third cause of action against defendant, Matson Navigation Company). Filed May 31, 1950.
3. Second Amendment to Complaint. Filed June 14, 1950.
4. Motions by defendant Citizens National Trust & Savings Bank of Los Angeles (1) to dismiss the action; and (2) for a more definite statement or for a Bill of Particulars. Filed Aug. 15, 1947.
5. Plaintiff's Bill of Particulars (furnished pursuant to defendant Bank's motion). Filed Dec. 30, 1947.
6. Answer of Dulien Steel Products, Inc., of California, a corporation, and Dulien Steel Products, Inc., a corporation. Filed Aug. 22, 1947.
7. Answer of defendant Citizen National Trust & Savings Bank of Los Angeles. Filed Jan. 28, 1948.
8. Amendment to answer of defendant Citizens



National Trust & Savings Bank of Los Angeles.  
Filed Jan. 16, 1950.

9. Second amendment to answer of defendant, Citizens National Trust & Savings Bank of Los Angeles. Filed Apr. 18, 1950.

10. Cross-complaint of Citizens National Trust & Savings Bank of Los Angeles. Filed Feb. 8, 1949.

11. Stipulation between defendant and cross-complainant, Citizens National Trust and Savings Bank of Los Angeles, and defendants and cross-defendants, Dulien Steel Products, Inc., of [347] California, and Dulien Steel Products, Inc., (that the allegation of the cross-complaint shall be deemed denied without necessity of filing a formal answer to cross-complaint). Filed Feb. 18, 1949.

12. Stipulation between defendant and cross-complainant, Citizens National Trust & Savings Bank of Los Angeles, and defendant and cross-defendant, Matson Navigation Company (that the allegations of cross-complaint of Bank shall be deemed denied without necessity of filing a formal answer). Filed Feb. 28, 1949.

13. Stipulation between J. B. Londono, plaintiff and cross-defendant, and Citizens National Trust & Savings Bank of Los Angeles, cross-complainant (that the allegations of cross-complaint may be deemed denied without necessity of formal answer). Filed Mar. 14, 1949.

14. Motion to strike testimony of plaintiff's witnesses (interposed by defendants, Dulien Steel

Products, Inc., of California, and Dulien Steel Products, Inc.). Filed May 25, 1950.

15. Answer of defendant, Matson Navigation Company. Filed Sept. 15, 1948.

16. Plaintiff's reply to counterclaim of defendant, Citizens National Trust & Savings Bank of Los Angeles. Filed Feb. 19, 1948.

17. Interrogatories of the defendant, Citizens National Trust & Savings Bank of Los Angeles directed to plaintiff, J. B. Londono. Filed Oct. 14, 1947.

18. Plaintiff's answers to defendant Bank's interrogatories. Matson offered in evidence 6, 20, 21. Defendant Bank offered in evidence 1, 3, 4, [348] 8, 9. Filed Dec. 30, 1947.

19. Interrogatories by cross-complainant, Citizens National Trust & Savings Bank of Los Angeles requested of Matson Navigation Company. Filed Dec. 13, 1949.

20. Answers to interrogatories (by Matson to Bank's interrogatories). Filed Jan. 30, 1950.

21. Interrogatories of plaintiff directed to defendant, Matson Navigation Company. Filed Mar. 7, 1950.

22. Answers of Matson Navigation Company to interrogatories of plaintiff. Filed Mar. 30, 1950.

23. Notice of Motion for Order permitting defendants Dulien Steel Products, Inc., of California

and Dulien Steel Products, Inc., to file cross-complaint against Matson Navigation Company, Affidavit and proposed cross-complaint. Filed May 24, 1950.

24. Substitution of Attorneys (for Matson Navigation Company). Filed July 20, 1948.

25. Pretrial statement and points and authorities of plaintiff and libelant, J. B. Londono. Filed Feb. 13, 1950.

26. Motion to Dismiss and for non-suit; points and authorities (interposed by defendants, Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc.). Filed May 23, 1950.

27. Findings of Fact and Conclusions of Law. Filed Nov. 16, 1950.

28. Plaintiff's motion to Amend Findings and make additional Findings and Conclusions of Law and amend Judgment accordingly. Filed Nov. 30, 1950.

29. Judgment. Filed Nov. 17, 1950.

30. Order amending Judgment Nunc Pro Tunc. Filed Nov. 27, 1950.

31. Order on plaintiff's motion to amend Findings and Conclusions of Law and amend Judgment accordingly. Filed Nov. 30, 1950. [349]

32. All exhibits received in evidence and all exhibits marked for identification, only. Defendants Dulien intend to and will make a motion to the



U. S. Court of Appeals, Ninth Circuit, requesting that all original exhibits and exhibits marked for identification only be transmitted to the Appellate Court for its use on appeal and that none of the documentary exhibits will be published in the record. Defendants Dulien request that Exhibits 51, 52, 54 and 63, each of which is a one hundred pound roll of barbed wire, be retained in the Clerk's office, U. S. District Court, in Los Angeles, until such time as the U. S. Court of Appeals, Ninth Circuit, desires said exhibits to be sent to the Clerk of the U. S. Court of Appeals.

33. Document prepared by counsel for plaintiff consisting of two pages, entitled "Estimates of Damages—Londono" submitted to the Court by counsel for plaintiff at the time of the final argument on June 16, 1950.

34. Notice of Appeal of defendants Dulien.

35. Supersedeas and Cost Bonds on Appeal of defendants Dulien.

36. Designation of Contents of Record on Appeal by defendants Dulien.

Appellants Dulien request that the record on appeal include each and all of the foregoing. However, insofar as the items hereinabove contained are already included in the contents of the record on appeal by Citizens National Trust & Savings Bank of Los Angeles, [350] there is no request that the items so included be duplicated by this designation. It is intended that the contents of record on appeal

shall include all of the items designated by any appellant, but without duplication.

/s/ JOSEPH H. DASTEEL.

PRESTON, THORGRIMSON &  
HOROWITZ,

By /s/ CHARLES HOROWITZ,  
Attorneys for Appellants.

[Endorsed]: Filed December 12, 1950. [351]

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[Title of District Court and Cause.]

DESIGNATION BY APPELLEE, J. B. LONDONO, OF PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL PURSUANT TO RULE 75(a)

Appellee, J. B. Londono the plaintiff in the above-entitled action, hereby designates the following additional portions of the record, proceedings and evidence to be included in the record on appeal pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, being those portions required by him in addition to those heretofore designated by the appellants Dulien Steel Products, Inc., of California, a corporation; Dulien Steel Products, Inc., a corporation, and Citizens National Trust and Savings Bank of Los Angeles: [361]

1. Summons and return of service of Writ show-

ing service on Dulien Steel Products. Inc. Filed Aug. 25, 1947.

2. Stipulation joined in by defendants Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., waiving answer to Matson Navigation Company's Cross-Complaint. Filed Feb. 13, 1950.

3. Pretrial memorandum of Dulien Steel Products, Inc., of California. Filed Feb. 13, 1950.

4. Notice of Motion for order permitting defendants Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., to file Cross-Complaint against Matson Navigation Company, and Affidavit of Joseph H. Dasteel served and filed therewith. Filed May 24, 1950.

5. (Proposed) Cross-Complaint of Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc. Lodged May 24, 1950.

6. Substitution of attorneys for Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., (adding Henry S. Dottenheim). Filed July 11, 1950.

7. Judge's remarks and decision at hearing on 12-7-50 on plaintiff's motion to Amend Conclusions of Law. (This additional designation is made by plaintiff because of the uncertainty from defendants' Dulien's language on lines 1 to 4, inclusive, page 2, of their "Designation of Contents of [362] Record on Appeal" as to whether or not they have



designated the Judge's said remarks of Dec. 7, 1950.)

8. Deposition of John E. Porter. Filed April 8, 1950.

9. Depositions of Albert B. Carter, Musuo Hirata, Henry W. C. Lum, George W. H. Lum and Kenneth T. S. Kam. Filed April 8, 1950.

10. Libel in Personam in admiralty suit No. 8482-PH entitled J. B. Londono, Libelant, vs. United States of America, United States Maritime Commission and the War Shipping Administration, Respondents. Filed July 26, 1948.

11. Answer of the Respondents in admiralty suit No. 8482-PH. Filed April 26, 1949.

12. Amendment to Libel in Personam in admiralty suit No. 8482-PH. Filed May 26, 1950.

13. Designation by Appellee, J. B. Londono, of Portions of the Record, Proceedings and Evidence to Be Contained in the Record on Appeal Pursuant to Rule 75(a). Filed Dec. 22, 1950.

14. Appellee respectfully reserves the right by subsequent designation supplemental hereto to designate herein the Findings of Fact, Conclusions of Law and Judgment in admiralty suit No. 8482-PH (not yet signed and filed), if after they are signed and filed he is advised so to do, and any other proceedings in said admiralty suit occurring subsequent hereto. [363]

Any portion of the record, proceedings or evi-

dence herein designated to be contained in the record on appeal which has already been designated by any other party to the appeal herein shall not be duplicated in said record on appeal, but the items herein designated, as additional matter, shall constitute a part of a single record on appeal to be prepared in accordance with Rule 75(k) of the Rules on Appeal.

Dated December 21st, 1950.

/s/ THOMAS S. BUNN,  
Attorney for Appellee,  
J. B. Londono.

Affidavit of Service by Mail attached.

Receipt of copy acknowledged.

[Endorsed]: Filed December 22, 1950. [364]

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[Title of District Court and Cause.]

### SUBSTITUTION OF ATTORNEYS

Defendant Matson Navigation Company, a corporation, hereby substitutes the law firms of Brobeck, Phleger & Harrison and Morrow & Morrow as their attorneys of record in place of the law firms of

Brobeck, Phleger & Harrison and Morrow & Trippet.

Dated December 31, 1950.

MATSON NAVIGATION COMPANY,

A Corporation, Defendant,

By /s/ [INDISTINGUISHABLE]

Its Secretary.

We hereby consent to the above substitution.

Dated December 31, 1950.

BROBECK, PHLEGER &  
HARRISON,

By /s/ GREGORY A. HARRISON,

MORROW & TRIPPET,

By /s/ JOHN C. MORROW,

Attorneys for Said Defendant.

We hereby accept the above substitution.

Dated December 31, 1950.

BROBECK, PHLEGER &  
HARRISON,

By /s/ GREGORY A. HARRISON,

MORROW & MORROW,

By /s/ JOHN C. MORROW.

Affidavid of Service by Mail Attached.

[Endorsed]: Filed January 11, 1951. [372]



[Title of District Court and Cause.]

**ORDER CORRECTING ERRORS IN RE-  
PORTER'S TRANSCRIPT OF PROCEED-  
INGS AT TRIAL**

On motion of plaintiff, by Thomas S. Bunn, his attorney, coming on regularly for hearing this 25th day of June, 1951, at the hour of 10:00 o'clock a.m., Honorable Peirson M. Hall, Judge presiding, all parties being present or having been duly notified of the time and place of hearing, and the court having examined the Clerk's copy of the Reporter's transcript of the proceedings at the trial of the above-entitled cause in each and every one of the portions of said transcript to the correction of which said motion is directed and having found that said transcript as filed herein and as heretofore transmitted to the Clerk of the United States Court of Appeals for the Ninth Circuit is in error in the respects hereinafter mentioned and corrected hereby. Now, Therefore, for the purpose of making the record conform to the truth in those respects,

It is Hereby Ordered under the provisions of F.R.C.P. 75(h) that the reporter's transcript of the testimony and other proceedings at the trial of the above-entitled case be and the same is hereby corrected in the following respects, this order is hereby directed to be transmitted to the said United States Court of Appeals for the Ninth Circuit, before which Court said cause is now on appeal, and the clerk of said Court is hereby authorized and requested by this Court to make such corrections by inter-

lineation in the original record and all copies thereof now in his custody, to wit:

Volume I.

P. 20, line 13—Add, after word “Londono,” the words “on that.”

P. 22, line 24—Change \$10,000.00 to \$10.00.

P. 26, line 17—Change “sale” [of lading] to “bill” [of lading].

P. 32, line 9—Change “had” to “was.”

P. 38, line 16—Change “our” to “out.”

P. 58, line 22—Change “sent” to “send.”

Volume II.

P. 129, line 23—Change “exactly” to “exact date.”

P. 133, line 5—Change “be accompanied by” to “accompany.”

Volume III.

P. 290, line 20—Change “complaint” to “complete.”

P. 333, line 17—Change “an” to “a ruling.”

Volume IV.

P. 383, line 19—After word “also” strike the comma and insert word “acting.”

Volume V.

P. 559, line 10—Change word “yes” to “no.”

Volume VI.

P. 719, line 11—Change “it” to “if.”

Volume IX.

P. 1078, line 15—Change “the witness” to “the court.”

Volume XI.

P. 1454, line 10—Change “the court” to “the witness.”

Volume XIII.

P. 1858, line 10—Change “134” to “734.”

Volume XIX.

P. 2776, line 8—Change “wasn’t” to “was.”

Volume XXVI.

P. 3855, line 19—Change “somebody” to “socio.”

Volume XXXI.

P. 4691, line 12—Change “instruction” to “construction.”

Dated June 25, 1951.

/s/ PEIRSON M. HALL,  
Judge.

[Endorsed]: Filed U.S.D.C. June 25, 1951.

[Endorsed]: Filed U.S.C.A. June 29, 1951.

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[Title of District Court and Cause.]

ORDER CORRECTING CLERICAL ERRORS  
IN FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT NUNC PRO  
TUNC

The motion of plaintiff, by Thomas S. Bunn, his attorney, for an order correcting clerical errors in the decision and judgment herein coming on regularly before this Court, the Honorable Peirson M.



Hall, Judge, presiding, on July 5th, 1951, at the hour of 10:00 o'clock, a.m., after due notice thereof given to all parties in accordance with an order of this Court shortening the time of service thereof; defendant Citizens National Trust & Savings Bank of Los Angeles being represented by its attorneys of record, Cosgrove, Cramer, Diether and Rindge, by Leonard A. Diether, Esq., and Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc., being represented by their attorney of record, Joseph H. Dasteel, Esq.; and all parties having had an opportunity to be heard thereon and it appearing to the Court that in spite of statements made by the Court in its oral opinion uttered at the close of the trial on June 16, 1950, to the effect that there must be no double recovery by plaintiff and in spite of extensive discussions in chambers between the Court and counsel for all parties to the same effect, nevertheless it apparently escaped the attention of all counsel and the court at the time the Findings, Conclusions and Judgment were finally settled that the judgment as finally worded might be interpreted as possibly permitting a double recovery by the plaintiff to the extent of the amount remaining unpaid on plaintiff's promissory note to the bank, in the event that plaintiff collected the full amount of this Judgment and cost from defendant Dulien only, and not from deft. bank whereas it was never the intention of the Court or counsel that such possibility be permitted; and it appearing that any possibility of such double recovery is altogether inconsistent with the other provisions of said decision

and judgment and resulted solely from clerical errors in the composition and drafting of said decision and judgment; and it further appearing that for said reasons this Court has the power to correct such clerical errors even now after the docketing of the appeal, and that the correction thereof will be in the interests of justice and equity, now therefore, the motion of plaintiff is hereby granted and under the provisions of Section 75(h) of the Federal Rules of Civil Procedure and under the power which is inherent in this Court to correct clerical errors in its own records so as to make said records speak the truth,

It Is Hereby Ordered that clerical errors in the findings of fact, conclusions of law and judgment herein be and they are hereby corrected nunc pro tunc as of November 16th, 1950, the date of said findings, conclusions and judgment, in the following manner, to wit:

1. By adding to the findings of fact, as a new paragraph thereof numbered L, the following paragraph:

“L.

“The difference between the \$236,355.51 to which plaintiff is entitled as against defendants Dulien and the \$17,181.35 balance now remaining unpaid to defendant bank on plaintiff's said promissory note of July 31, 1946, is \$219,174.16. In the calculation of the amount to which plaintiff is entitled as against defendant bank there has been deducted, as above

stated in Paragraph XL hereof, the amount now remaining unpaid on plaintiff's said note; but in the calculation of the amount to which plaintiff is entitled as against defendants Dulien no such deduction has been made because defendants Dulien are not entitled to any such credit; but if plaintiff collects from defendants Dulien the amount of said balance on his said note to the bank or any portion thereof after having been otherwise made whole as to everything to which he is entitled from defendants Dulien except the balance remaining unpaid on said note, to wit, except the last \$17,181.35 and interest on said note, then and then only will the bank be entitled to reimbursement by plaintiff on account of said note for any such actual recovery by plaintiff from defendants Dulien; and therefore the Court further finds that upon the collection by plaintiff of all or any portion of the last \$17,181.35 principal of said \$236,355.51 judgment against defendants Dulien the bank shall be entitled to be reimbursed by plaintiff to the extent of such collection, together with such interest thereon, up to but not exceeding 5% per annum, as plaintiff may collect thereon from defendants Dulien."

2. By adding to the conclusions of law, as a new paragraph thereof numbered XVI, the following:



## “XVI.

“That if, after having been otherwise made whole as to everything to which plaintiff is entitled from defendants Dulien except a sum equal to the balance remaining unpaid on his note to defendant bank, to wit, except \$17,181.35 plus interest on said note, plaintiff collects from defendants Dulien all or any portion of said last \$17,181.35 principal of the amount of said \$236,355.51 judgment against defendants Dulien, then and then only will the bank be entitled to any reimbursement from plaintiff on account of said note for any of plaintiff’s actual recovery from defendants Dulien; but upon the collection by plaintiff of all or any portion of said last \$17,181.35 principal of his said \$236,355.51 judgment against defendants Dulien the bank shall be entitled to be forthwith reimbursed by plaintiff to the extent of such collection, together with such interest thereon, up to but not to exceed 5% per annum, as plaintiff may collect thereon from defendants Dulien.”

3. By adding to the judgment, as a new paragraph thereof numbered X, the following:

## “X.

“That if, after having been otherwise made whole as to everything to which plaintiff is entitled from defendants Dulien except a sum equal to the balance remaining unpaid on his note to defendant bank, to wit, except \$17,181.35

principal plus interest on said note, plaintiff collects from defendants Dulien all or any portion of said last \$17,181.35 principal of the amount of said \$236,355.51 judgment against defendants Dulien, then and then only shall the bank be entitled to any reimbursement from plaintiff on account of said note for any of plaintiff's actual recovery from defendants Dulien; but upon the collection by plaintiff of all or any portion of said last \$17,181.35 principal of his \$236,355.51 judgment against defendants Dulien the Citizens National Trust & Savings Bank of Los Angeles shall be forthwith reimbursed by plaintiff to the extent of such collection, together with such interest thereon, up to but not to exceed 5% per annum, as plaintiff may collect thereon from defendants Dulien."

4. By inserting in the first line of paragraph IV of the judgment, on page 3 thereof, after the word "That," the following language, to wit: "except as hereinafter conditionally provided."

5. By inserting in the first line of paragraph VII of the conclusions of law, on page 49 thereof, after the word "That," the following language, to wit: "except as hereinafter conditionally provided."

And It Is Hereby Further Ordered that this original order be forthwith transmitted by the Clerk of this Court to the Court of Appeals of the United

States for the Ninth Circuit, at San Francisco, California.

Dated: July 5th, 1951.

/s/ PEIRSON M. HALL,  
Judge.

[Endorsed]: Filed U.S.D.C. July 5, 1951.

[Endorsed]: Filed U.S.C.A. July 9, 1951.

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[Title of District Court and Cause.]

NOTICE OF ORDER CORRECTING CLERICAL  
ERRORS IN FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND JUDG-  
MENT NUNC PRO TUNC

To: Dulien Steel Products, Inc., of California, a California corporation, and Dulien Steel Products, Inc., a Washington corporation, and to Joseph H. Dasteel, Their Attorney; and to Defendant Citizens National Trust & Savings Bank of Los Angeles, and to Cosgrove, Cramer, Diether & Rindge, Its Attorneys:

You Will Please Take Notice that on July 5, 1951, the Honorable Peirson M. Hall, Judge of the above-entitled Court, signed, and there was filed herein, on the same day, the order of said Court correcting clerical errors in Findings of Fact, Conclusions of Law and Judgment herein, and directing that said order be forthwith by the Clerk of this Court transmitted to the United States Court



of Appeals for the Ninth Circuit, and that for your convenience a photostatic copy of said order is served upon each of you herewith.

Dated: July 5, 1951.

/s/ THOMAS S. BUNN,  
Attorney for Plaintiff,  
J. B. Londono.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 6, 1951.

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[Title of District Court and Cause.]

LIBEL IN PERSONAM FOR DAMAGES FOR  
ISSUANCE OF FALSE BILL OF LADING

To the Honorable Judges of the Above-Entitled  
Court:

Libelant, J. B. Londono, files this his libel in a cause of contract, civil and maritime, against the United States of America, the United States Maritime Commission, and the War Shipping Administration, owners of the S.S. Sonoma, formerly the S.S. White Squall, and alleges as follows:

I.

That libelant is a citizen of and resides in the Republic of Colombia, South America, and has no place of business in the United States of America.

That under the law of the Republic of Colombia a citizen of the United States of America having

or claiming rights against the Republic of Colombia and its agencies identical with those herein claimed by libelant against the United States of America and [376] the other respondents named herein could sue in the courts of the Republic of Colombia and upon a proper showing recover against the said Republic and its agencies; and therefore libelant alleges that there exists between the United States of America and the Republic of Colombia the reciprocity necessary to enable this libelant to maintain this suit in admiralty in the above-entitled Court.

## II.

That at all times herein mentioned the respondent United States of America was and still is a sovereign which has by law consented to be sued, and the respondents United States Maritime Commission and the War Shipping Administration, each having its principal office in Washington, D. C., were and still are agencies or instrumentalities of the respondent United States of America.

## III.

(a) That this suit is brought under the Act of March 9, 1920, known as the "Suits in Admiralty Act" (41 Stat. 525; 46 U.S.C.A. 742).

(b) That at all times herein mentioned prior to September 1, 1946, the vessel S.S. White Squall was employed as a merchant vessel owned and operated by the respondents; that at some time after said date said vessel became known and is now known as the S.S. Sonoma; that said vessel is

now or during the currency of process herein will be within the Port of Los Angeles, California, and within the jurisdiction of this Honorable Court; and that said vessel will be hereinafter referred to as the White Squall.

(c) That the unloading of the shipment of barbed wire hereinafter mentioned, out of the condition and quantity of which libelant's cause of action arose, was begun at Long Beach, California, harbor on July 29, 1946; that libelant first learned of the rusty condition of said barbed wire on July 31st, 1946; that libelant [377] first learned of the falsity of the hereinafter-mentioned bill of lading on or about September 4, 1946; that this suit in admiralty is therefore brought within the two-year statutory period allowed therefor by the provisions of Section 5 of the Act of March 9, 1920, known as the Suits in Admiralty Act (41 Stat. 525; 46 U.S.C.A. 745), in that it is brought within two years after libelant's cause of action arose.

#### IV.

That this Honorable Court has jurisdiction of this libel under the provisions of Section 2 of the Act of March 9, 1920, known as the "Suits in Admiralty Act" (41 Stat. 525; 46 U.S.C.A. 742).

#### V.

(a) That at all times herein mentioned Dulien Steel Products, Inc., of California was and now is a corporation organized and existing under the laws of the State of California. That libelant is informed



and believes, and upon that ground alleges, that at all times herein mentioned the names "Dulien Steel Products, Inc., of California," and "Dulien Steel Products, Inc.," were used interchangeably by said corporation or corporations, and the said corporations are collectively hereinafter referred to as "Dulien."

(b) That at all times herein mentioned the Citizens National Trust and Savings Bank of Los Angeles, sometimes hereinafter referred to as the "bank," was and now is a national banking association organized and existing under the laws of the United States of America and located and having its principal place of business within the jurisdiction of this Court, to wit, in the City of Los Angeles, County of Los Angeles, State of California; and during all the times herein mentioned said bank was and now is engaged in a general banking business in Los Angeles, California.

(c) That at all times herein mentioned Matson Navigation [378] Company, hereinafter referred to as "Matson," was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco, California, but maintaining also a business office in the City of Los Angeles, California.

## VI.

That libelant is informed and believes and upon that ground alleges that Matson Navigation Company at all times herein mentioned and in all its

conduct herein mentioned was acting as the agent of the respondents United States of America, United States Maritime Commission and the War Shipping Administration under a written agency agreement or other contract with the terms of which libelant is not familiar; that all the acts and things herein alleged to have been done and performed by Matson were so done and performed by it as such agent of the respondents, and that Matson was thereunto duly authorized, and that such acts and things so done and performed by Matson were the acts of Matson's said principals, the respondents herein, and that the respondents are fully liable to libelant for any and all damages resulting to him therefrom.

## VII.

That on or about the 11th day of July, 1946, at Los Angeles, California, Dulien orally offered to sell to libelant at the price of One Hundred Seven (\$107.00) Dollars per ton, f.o.b. Los Angeles, approximately 2,700 tons of unused Government surplus barbed wire, hereinafter referred to as "wire," consisting of 1,350 tons of galvanized wire and 1,350 tons of black wire, which said Dulien then orally represented to libelant was owned by said Dulien and was in transit from Honolulu, Hawaii, on the Matson Navigation Company's steamship White Squall, and was due to arrive in the harbor in Los Angeles, California, on or about July 22, 1946, and then and there exhibited to libelant a [379] number of sample coils, or rolls, of good black and galvanized wire free from rust and covered with a

rust-preventing grease, and produced and exhibited to libelant certain additional sample cuttings of good black wire, likewise free from rust, and, as inducement to libelant to make such purchase, orally agreed and expressly warranted that the wire to be so sold to libelant had been, was and would be covered with a coat of protective, rust-preventing grease and was and would be in all respects equal in quality to said exhibited coils and sample cuttings.

### VIII.

That libelant, after examining said samples and in reliance upon said Dulien's said representations and express warranty, accepted said offer and agreed to purchase from Dulien said wire, and agreed to pay therefor the sum of \$288,900.00, payable upon drafts by Dulien against credits to be established with the bank before July 22nd, 1946. That on account of delay of the "White Squall" in arriving in the Long Beach Harbor, as herein-after alleged, said date of July 22nd, 1946, was thereafter by Dulien orally extended to include July 27th, 1946.

### IX.

That said purchase and sale were evidenced by a written sale order on a form supplied and prepared by Dulien the following day, that is, July 12, 1946, dated July 12, 1946, bearing No. LA-712, duly signed by Dulien in the name of Dulien Steel Products, Inc., and approved and accepted in writing by libelant, a copy of which sale order is attached hereto, marked Exhibit "A" and hereby



made a part hereof. That thereafter, on July 26, 1946, Dulien orally represented to libelant that the shipment of wire would be only 2,300 tons, of which Dulien would retain for itself 300 tons, to which change in quantity libelant orally agreed, and thereupon and in that manner by said mutual agreement between libelant and Dulien the quantity of libelant's said [380] purchase was reduced to 2,000 tons.

### X.

That said steamship was delayed and docked on July 26, 1946, at Pier A at the Long Beach, California, harbor, instead of the Los Angeles harbor; and on July 27, 1946, before libelant had seen any of the wire, and within the time which had been by Dulien orally extended to include that day, libelant purchased from the bank upon a written application therefor and received from the bank and delivered to Dulien said bank's irrevocable letter of credit, by its terms good until July 31, 1946, in favor of Dulien for \$214,000.00 to cover the purchase price of 2,000 tons of wire at \$107.00 per ton, a true copy of which letter of credit is attached hereto marked Exhibit "C" and hereby made a part hereof. That a copy of libelant's application for said letter of credit is attached hereto, marked Exhibit "B," and hereby made a part hereof.

That by the terms of said letter of credit and the written application therefor the bank was instructed by libelant, and it bound itself, to pay to Dulien \$214,000.00 on Dulien's sight drafts accompanied by a full set of clean on board ocean bills

of lading made out to order, endorsed in blank and marked freight prepaid, and by commercial invoices evidencing shipment of 2,000 tons of barbed wire in one shipment, invoiced on basis of c.i.f. Los Angeles harbor, to be shipped from Honolulu, Hawaii, to Los Angeles harbor. That on the same date of July 27th, 1946, and simultaneously therewith libelant orally instructed the bank that upon the bank's receipt of said required bills of lading it should give authority to libelant's Los Angeles shipping agent, Mattoon & Co., Inc., to ship said wire to South America, subject to directions to be thereafter given by libelant.

#### XI.

That on July 29, 1946, before libelant had seen any of said [381] wire and before any of said wire had been unloaded from the ship, the bank in disregard and violation of the terms of said letter of credit and the instructions given it by libelant in libelant's application therefor, and particularly without receiving from Dulien any bill of lading whatsoever, paid over and delivered to Dulien the full agreed purchase price of 2,000 tons of wire, to wit: the sum of \$214,000.00.

#### XII.

That there was thereafter unloaded on the dock at Pier A in Long Beach Harbor for libelant from said steamship "White Squall" only 1,919 tons of wire, or 81 tons less than the 2,000 tons paid for by the bank on libelant's behalf as above alleged.

That none of said wire for which the bank made said payment of \$214,000.00 was of the quality or in the condition warranted by Dulien, or according to the samples exhibited by Dulien to libelant as above alleged, but the entire lot was badly rusted and unmerchantable and inferior in all respects to said samples and was of a then undetermined value; and said shipment was 81 tons short of the agreed quantity. That in an effort to determine what could be done with said wire and to minimize the loss thereon, libelant then, with the full knowledge and written consent of the bank and Dulien, and after written notice to Matson and with Matson's full knowledge, sold 25 tons of said wire at the price of \$65.00 per ton for the purpose of experimental cleaning, called "pickling," by the purchaser. That said experiment was made and the result thereof was the ascertainment, and libelant hereby alleges, that 1,760 tons of the wire was in such rusty condition that there was no market for it in Los Angeles County for use in the United States, and its highest market value and the best price obtainable for it in Los Angeles County for export was \$51.00 per ton; that 134 tons of said wire was in such rusty condition that its reasonable market value in Los Angeles County was [382] only \$4.50 per ton, and by and with the written consent of Dulien and the bank, and after notice to Matson and with Matson's full knowledge, 104 tons thereof was sold for junk at \$4.50 per ton.



## XIII.

That said wire was shipped from Honolulu, Hawaii, to Los Angeles on the "White Squall" and said shipment was made under a bill of lading issued by Matson to Dulien. That libelant does not have and never has had said bill of lading, but libelant is informed and believes and upon that ground alleges: that said bill of lading for 4,599,948 pounds, which is approximately the equivalent of 2,300 tons, of wire, whereas the quantity of wire actually shipped thereunder was only 2,219 tons, or 81 tons short of the quantity shown in said bill of lading; that said bill of lading was what is in the shipping business known as a straight clean bill of lading, that is, it was a straight bill of lading which upon its face showed that Dulien was both the shipper and the consignee of the wire, and that said wire had been received by Matson from the shipper (Dulien) in apparent good order and condition except as therein otherwise noted, and that there were no exceptions noted in said bill of lading. That there is attached hereto, marked Exhibit "D" and hereby made a part hereof, what libelant is informed and believes and therefore alleges to be (except for the pen-written words "Deft. Matson A—P.S. Noon" subsequently written thereon) a photostatic copy of said bill of lading.

## XIV.

That libelant is informed and believes, and upon that ground alleges, that at the time said bill of lading was issued by Matson said wire was obvi-

ously badly rusted and was not in such condition as to warrant the issuance of a clean bill of lading thereon but, on the contrary, was in such obviously bad condition on account of said rust as to require, under the provisions of Section [383] 22 of Chapter 415 of the Act of August 29, 1916 (U.S.C.A. Tit. 49, Section 102), the notation on the bill of lading of exceptions to the "apparent good order and condition" representation therein contained; that said bill of lading consisted of a printed form into which there had been typed certain information applicable to this particular shipment, showing, among other things, the name of the shipper, the name of the ship, the name of the consignee and the quantity of wire supposed to have been delivered to the carrier; that thereafter in conformance with said bill of lading a freight bill upon a printed form was issued by Matson containing in typewriting those same insertions as to description and quantity of said wire copied from said bill of lading, and that said freight bill did not contain any exceptions or notations of exception to the "good order and condition" representation made in said bill of lading as to the condition of said wire; that it was then the custom and practice of Matson, with which custom and practice the bank was then familiar, to cause each freight bill issued by it to contain all the descriptive information about the shipment covered thereby as was contained in the bill of lading issued upon the same shipment; and that therefore the freight bill so issued by Matson was false in that it did not contain a notation of the obviously

rusty condition of said wire and it was for 81 tons more wire than was actually shipped; that a copy of said freight bill is hereby attached, marked Exhibit "E," and hereby made a part hereof; that when Dulien on July 29, 1946, presented to the bank Dulien's drafts for \$214,000.00 drawn against libelant's said letter of credit, as above alleged, said drafts were accompanied by the above-mentioned freight bill instead of the clean order bill of lading specified in and required by the terms of said letter of credit, and that the bank carelessly and negligently mistook said freight bill for the required bill of lading and made said \$214,000.00 payment to Dulien thereon. [384]

## XV.

That Dulien and Matson caused said wire to be unloaded onto the dock without segregation as to quality, and in order to determine the reasonable market value thereof in Los Angeles County as \$51.00 per ton, or any other definite sum, and in order to minimize the loss resulting from the condition of said wire as delivered, it was reasonably necessary that there be expended or incurred, and the libelant for that purpose, prior to October 22nd, 1946, **did expend or authorize the expenditure of** the following sums of money, or incurred the following obligations, in the necessary selection, segregation and moving of said wire on the dock, and in wharf and dock charges thereon while said wire remained upon the dock at Pier A in Long Beach, to wit:



Dock storage .....	\$2,837.45
Inspection by Los Angeles Cargo appraisers .....	39.85
Segregation and supervision .....	48.00
Extra drayage on account of poor condition of wire .....	130.50
Sorting labor on account of poor condition of wire .....	2,734.86
Extra charges by Mattoon & Co., Inc.....	750.00
	<hr/>
	\$6,540.66

That each and all of said special expenses constituted additional loss and damage as a direct and proximate result of Matson's said issuance of said false bill of lading on said wire so sold to libelant.

#### XVI.

That as the direct and proximate result of Dulien's said breach of warranty and its said misrepresentations as to said wire it became and was necessary that libelant remain in California [385] until proper disposition could be made of said wire for the purpose of minimizing the loss, and libelant did remain in California away from his own country and business for three months, and his living expense cost of such stay was \$3,000.00; and libelant alleges that within that time he expended that sum in living expenses and that the expenditure thereof was made necessary in the minimizing of the loss on said wire.

#### XVII.

That the negligence of Matson, and of its prin-

cipals, the respondents herein, in issuing said false bill of lading and said freight bill following the inserted language of said bill of lading as to the condition and quantity of said wire combined with the negligence of the bank in paying thereon, and the direct and proximate result of said combined negligence of Matson, and its principals, the respondents herein, and the bank together was loss and damage to the libelant in the following sums of money on the following accounts, to wit:

- (a) The full purchase price of \$107.00 per ton for 81 tons of wire which were never delivered to plaintiff, amounting to .....\$ 8,667.00 together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;
- (b) The difference between the purchase price of \$107.00 per ton and the sale price of \$65.00 per ton, or \$42.00 per ton, for 25 tons of wire sold to Gonzales & Blanco for experimental "pickling" as hereinbefore alleged, amounting to ..... 1,050.00 together with interest thereon [386] at the rate of 7% per annum from July 29, 1946, until paid;
- (c) The difference between the purchase price of \$107.00 per ton and the \$51.00 per ton reasonable market value at Los Angeles, California, of 1,760 tons of wire, or \$56.00 per ton,

amounting to .....	98,560.00
together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;	
(d) The difference between the purchase price of \$107.00 per ton and the \$4.50 per ton actual value at Los Angeles, California, of 134 tons of wire, or \$102.50 per ton, amounting to .....	13,735.00
together with interest thereon at the rate of 7% per annum from July 29, 1946, until paid;	
(e) The extra expense set out in full in the foregoing Paragraph XV, amounting to .....	6,540.66
together with interest thereon at the rate of 7% per annum from October 22, 1946, until paid;	
(f) Plaintiff's personal living expenses in California for three months while attempting to minimize the loss on said wire, as set out in full in the foregoing Paragraph XVI, amounting to .....	3,000.00
together with interest thereon [387] at the rate of 7% per annum from October 22, 1946, until paid;	

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Totaling, exclusive of interest..\$131,552.66



## XVIII.

That there is now pending in the above-entitled Court a civil action, No. 7358-PH, entitled J. B. Londono, Plaintiff, vs. Dulien Steel Products, Inc., of California, et al., Defendants, in which the libelant herein is plaintiff, and Dulien, the bank and Matson Navigation Company are defendants; that respondents named in this libel in personam are not parties to said civil action because libelant did not know at the time said action was filed that the protection of his rights required that suit be brought against the respondents herein; that since the filing of said civil action libelant has learned that it is the intention of Matson, who has not yet answered in said civil action, to contend that not Matson itself, but its principals, the respondents herein, are liable to libelant, if anybody is liable, for the alleged negligence of Matson hereinabove set forth; and that this suit in admiralty is brought for the purpose of enforcing any rights which the libelant may have against the respondents herein as the owners of the S.S. White Squall, and, therefore, the parties liable for the negligence of their agent Matson in the issuance of the alleged false bill of lading; and in due time request will be made of this Court that this suit in admiralty be consolidated for trial with the said civil action at law No. 7358-PH.

## XIX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of

the United States and of this Honorable [388] Court.

Wherefore, said libelant prays that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said United States of America, and United States Maritime Commission, and the War Shipping Administration, and that respondents may be cited to appear and answer upon oath all and singular the matters aforesaid; that this Honorable Court will be pleased to decree payment to said libelant from said respondents of the damages aforesaid in the sum of \$131,552.66, with interest and costs, and that said libelant may have such other and further relief in the premises as in law and in justice he may be entitled to.

/s/ THOMAS S. BUNN,

Proctor for Libelant. [389]

State of California,

County of Los Angeles—ss.

Thomas S. Bunn, being first duly sworn, deposes and says: That he is the proctor for the libelant in the foregoing libel in personam; that the said libelant resides, and according to affiant's latest information is now, in the Republic of Colombia, South America, and is, therefore, not now available to verify said libel; that affiant has represented the libelant in the matters set forth in said libel at all times since August 10, 1946, and within that time has had occasion to investigate and has investigated

the facts and circumstances set out in said libel, and has been present at the taking of several depositions in relation thereto; that he has now in his personal possession many of the documents mentioned in said libel; that from said investigations, from conferences with witnesses, and from the examination of pertinent documents, affiant has acquired a large quantity of information about the subject matter of said libel, and he believes that upon said information he is qualified to verify said libel; that affiant has read the foregoing libel and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief obtained from the above-stated sources, and that he makes this verification for and on behalf of the libelant and because the libelant is in South America and not available to verify it himself.

/s/ THOMAS S. BUNN.

Subscribed and sworn to before me this 26th day of July, 1948.

[Seal]      /s/ NAOMA C. HART,

Notary Public in and for  
Said County and State.

My commission expires Mar. 21, 1952. [390]











In every contingency whatsoever and even in case of deviation or of unseaworthiness of the ship at time of loading or at any subsequent time, the rights and obligations, whatsoever they may be, of each and every person having any interest or duty whatsoever in respect of the receipt, care, custody, carriage, delivery or transshipment of the goods whether as shipper, consignee, holder or endorsee of the bill of lading, receiver or owner of the goods, master of the ship, carrier, shipowner, demise charterer, time charterer, operator, agent bailee, warehouseman, forwarder or otherwise howsoever, shall be subject to and governed by the terms of the Uniform Bill of Lading (Warship-lading 7-1-42) adopted by General Order No. 16 of the Administrator, War Shipping Administration, July 4, 1942, with the exception of Clause 27 thereof which shall be deemed to be incorporated herein, including any amendments thereto or special provisions thereof which may be in effect at the time the goods are received for shipment and applicable to the intended voyage. Copies of such Uniform Bill of Lading and amendments may be obtained on application to the War Shipping Administration, Washington, D. C., or to any of its District Offices or to the Agent of the Master at the port of shipment or port of discharge. This shipment shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act shall (except as may be otherwise specifically provided in the bill of lading referred to above) govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the carrier. Nothing herein contained, whether by expressed statement, reference, implication or otherwise, shall be deemed a surrender of any rights or immunities or an increase of any responsibilities or liabilities which the ship, her owner, charterer, operator, agent or master or any carrier, bailee, warehouseman or forwarder of the goods or the agent of any of them would have in the absence of this bill of lading. None of the terms of this bill of lading shall be deemed to have been waived by any person unless by express waiver signed by such person, or his duly authorized agent.

### NOTICE

If the goods herein covered are carried on a vessel owned by or under bareboat charter to the United States and which is a Public Vessel of the United States, War Shipping Administration, on behalf of the United States, hereby assumes all liabilities it would have with respect to the carriage of such goods if the vessel were a merchant vessel except with respect to cargo owned by the United States or any Agency or Department thereof, and lend-lease cargo. This clause is to be construed only as an agreement that such cargo when carried on such a Public Vessel shall be treated as though the carrying vessel were a merchant vessel with respect to liabilities for loss or damage to such cargo.



[The following list of Exhibits attached to the foregoing document are identical to Exhibits attached to the Complaint; Ex. A is identical to Ex. A, Ex. B is identical to Ex. B (face), Ex. C (face) is identical to Ex. C, Ex. C (reverse) is identical to Ex. B (back), Ex. E (face) is identical to Ex. D. (face), Ex. E (reverse) is identical to Ex. D (back).]

[Endorsed]: Filed July 26, 1948.

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[Title of District Court and Cause.]

### ANSWER OF THE RESPONDENTS

The respondents, United States of America, United States Maritime Commission and the War Shipping Administration, hereinafter referred to as respondents, answer libelant's Libel as [399] follows:

#### First Defense

\* \* \*

#### XIII.

Answering paragraph XIII of said Libel, these respondents admit that the libelant does not have and never has had said bill of lading, or any copy thereof; admit that the said bill of lading was for approximately 2,300 tons of wire, but deny that the quantity of wire actually shipped was only 2,219 tons or any quantity less than the quantity specified in said bill of lading attached to the Libel and marked Exhibit D; admit that said bill of lading



was what is in the [401] shipping business known as a straight clean bill of lading, showing on its face that the Dulien Steel Products of Calif. was both the shipper and the consignee, and that said wire had been received from the shipper (Dulien) in apparent good order and condition except as therein otherwise noted, and that there were no exceptions noted on said bill of lading; [402]

\* \* \*

#### Fourth Defense

The bill of lading actually issued for the shipment described in said Libel, which said bill of lading is annexed to the Libel as Exhibit D, showed on its face that it was a straight bill of lading, that is, a bill of lading wherein the shipper and consignee were the same party, and wherein the shipment was not to the order of the shipper but was non-negotiable; by reason thereof, these respondents were under no duty by statute, rule of law, or otherwise, to indicate thereon the condition or quality of the shipment carried on said vessel.

\* \* \*

#### Sixth Defense

Even if these respondents issued a false bill of lading, as alleged by the libelant in paragraphs XIII, XIV and XVII of this Libel, these respondents allege that at no time, in connection with any of the transactions mentioned in the Libel, did said libelant rely in any manner whatsoever upon the statements or any statement contained in said bill of lading, and in fact said libelant in said Libel

admits that he has never seen or had possession of said bill of lading, or even of a copy thereof, and as a consequence there could have been no reliance by said libelant upon any of the terms of said bill of lading. [404]

\* \* \*

### Eighth Defense

The contract of carriage for the shipment described in the Libel represented by the bill of lading, attached to the Libel and marked Exhibit D, was one between Matson Navigation Company and Dulien Steel Products, Inc., of California, which said contract was for the carriage of the shipment therein described from Honolulu to Los Angeles; said contract between Matson and Dulien was fully performed and completed by Matson prior to the assignment, if any, or purported assignment of said bill of lading to the libelant, and by reason thereof, libelant did not acquire and could not acquire any rights whatsoever against Matson, either individually or as agent of the United States of America, and in that behalf these respondents further allege that by issuing at Dulien's request a straight bill of lading wherein the shipper and the consignee were the same party, Matson had no reason, and, by the exercise of reasonable care, could have no reason, to believe that Dulien could or would attempt to assign or negotiate said bill of lading to any third party. [405]

\* \* \*

Wherefore, respondents pray that the libelant

take nothing by his Libel, and that these respondents be hence dismissed with their costs of suit.

JAMES M. CARTER,  
United States Attorney.

CLYDE C. DOWNING,  
Assistant U. S. Attorney,  
Chief of Civil Division.

/s/ BERNARD B. LAVEN,  
Assistant U. S. Attorney,  
Attorneys for Respondents.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 26, 1949. [407]



In the District Court of the United States in and  
for the Southern District of California, Central  
Division

No. 7358-PH Civil

Honorable Peirson M. Hall, Judge Presiding.

J. B. LONDONO,

Plaintiff,

vs.

DULIEN STEEL PRODUCTS, INC., OF CALI-  
FORNIA, a Corporation, DULIEN STEEL  
PRODUCTS, INC., a Corporation, CITIZENS  
NATIONAL TRUST & SAVINGS BANK OF  
LOS ANGELES, a National Banking Associa-  
tion, MATSON NAVIGATION COMPANY,  
a Corporation, et al DOES,

Defendants.

## REPORTER'S TRANSCRIPT OF PROCEEDINGS

September 29, 1947

Each witness whose testimony is hereinafter  
quoted or narrated was duly sworn before testifying.

At the hearing of the motion of defendant Bank  
to Dismiss, the following proceedings were had, Mr.  
Cramer appearing for defendant Bank.

\* \* \*

The Court: Let us take and apply the World's  
Columbian Exposition case and the doctrine laid  
down here and assume that that is the correct doc-  
trine. They have there an exculpating contract from

any responsibility for damages of any kind however originating. They do not have a provision—it is not referred to, I have not read the whole case; I assume it is not or you would have called my attention to it—in there such as the one in this document that I have here, in Exhibit B, which limits that exculpation to anything done in good faith.

Mr. Cramer: That is true, but unless the allegations of the complaint show that this was done in wanton or wilful negligence amounting to a breach of good faith, there is no charge that there was anything but a mistake or error. In fact, the third cause of action, as I recall it, asserts that the Bank through error, mistakenly paid it without obtaining a bill of lading. That, as I say, we cannot take notice of, but there is nothing in the second cause of action that shows any bad faith on the part of the Bank, and I claim that it is incumbent upon the pleader to show gross or wanton or wilful negligence amounting to bad faith.

The Court: I do not think so, counsel. The particular contract here calls for a definite and specified kind of bill of lading, and while it has all of the other clauses giving latitude to the action of the Bank, it nevertheless does provide for an identifiable kind of a bill of lading.

Now they say that the Bank paid the money out without any bill of lading, and they base their claim upon a violation of contract. It seems to me that in such a situation good faith is a defense. Mind you, that comes from old-fashioned pleadings.

I do not approve generally of pleadings drawn by lawyers who come in and point fingers at somebody and make them spend two or three months in court proving the plaintiff's case, the so-called rules of simplified pleadings.

Mr. Cramer: The only authority I have on this point is the Exposition case.

The Court: So I think that I must deny your motion to dismiss on that ground.

\* \* \*

April 18, 1950—10:00 A.M.

The Following Proceedings Were Had

\* \* \*

The Court: Londono v. Dulien Steel Products.

Mr. Bunn: Ready for the plaintiff, your Honor.

Mr. Dasteel: Ready.

The Court: Very well. For the plaintiff we have Mr. Bunn, for the defendant Dulien Steel Products of California and Dulien Steel Products, Inc., Mr. Joseph Dasteel.

Mr. Dasteel: Ready, your Honor.

The Court: For Citizens National Trust and Savings Bank, Cosgrove, Cramer, Diether & Rindge, by——

Mr. Diether: Mr. Diether and Mr. O'Malley.

The Court: And Matson Navigation [4-A\*]  
Company?

Mr. Aldwell: Brobeck, Phleger & Harrison, by  
Alan B. Aldwell. [5]

\* \* \*



The Court: Let me see if I have your proposal correctly.

Mr. Dasteel proposes to stipulate that the wire involved in this suit was unused Government surplus barbed wire as purchased by defendant Dulien Steel Products, Inc., of California from the Interior Department of the United States Government.

Mr. Dasteel: That is correct.

The Court: Mr. Bunn?

Mr. Bunn: I can go along with him only as to all the words except the word "as." I will stipulate that the proposal is true.

The Court: Except for the word "as"?

Mr. Bunn: Except for the word "as."

The Court: In other words, you will stipulate that the wire involved in this suit was unused surplus barbed wire purchased by the defendant Dulien Steel Products, Inc., of California from the Interior Department of the Government?

Mr. Bunn: I will.

Mr. Dasteel: I will accept that change, your Honor.

The Court: Is there anybody who does not?

Mr. Diether: So stipulated.

The Court: Does everybody stipulate?

Mr. Hubert Morrow: Yes, sir. [10]

Mr. Laven: The Government so stipulates, your Honor.

The Court: Very well.

Mr. Dasteel: Now if there are no other motions, and I presume we have reached a point now where the plaintiff is about to put on his case, I would like

to make a motion, your Honor, the motion to dismiss against the defendant Dulien Steel Products on the grounds——

The Court: Which one?

Mr. Dasteel: Both of the Dulien Steel Products, Inc., and all of the Dulien interests which the plaintiff may have in mind.

The Court: There are two entities named.

Mr. Dasteel: Both of them, your Honor.

The Court: That is, Dulien Steel Products, Inc., of California and Dulien Steel Products, Inc.?

Mr. Dasteel: Yes, your Honor—on the grounds that the allegations of the complaint fails to state a cause of action in that plaintiff's own Exhibit A provides for the purchase of unused Government surplus wire as purchased by seller from the Interior Department, and nowhere in the complaint is that denied.

In other words, the plaintiff received just what he ordered and there is no denial of that fact.

The Court: How could he deny anything in an affirmative allegation? [11]

Mr. Dasteel: He doesn't say anywhere that he did not receive what he ordered.

The Court: I am afraid I will have to disagree with you. The motion is denied.

Are there any more preliminaries?

Mr. Diether: May I inquire of Mr. Dasteel through the Court if it is proper, in referring to the two clients he represents, to refer to them merely as "Dulien"? Are they both interchangeable and does one refer to the other?

The Court: Mr. Bunn tried to get that straightened out last week, and his stipulation was declined, and Mr. Bunn stated that he would be forced to be put on his proof and would put on his proof as to the identity of the various defendants Dulien Corporation.

Mr. Diether: I am sorry.

Mr. Dasteel: If your Honor please, if it will assist in clearing up this matter, the Dulien Steel Company in Los Angeles is a corporation, it is the Dulien Steel Products, Inc., of California, a California corporation. There is no other company. I can't understand why the plaintiff named it twice, but in order that it might be covered in answering I answered under both names so that there wouldn't be any question about it. I can't understand why there should be any question at this time.

Mr. Bunn: If your Honor please, that statement by Mr. [12] Dasteel may clear up the matter that arose last week. It is obvious from the documents that Dulien signed some of them in the one language and some of them in the other language, that is, Dulien Steel Products, Inc., and some Dulien Steel Products.

The Court: Mr. Dasteel, to settle the matter, let me suggest that it be put in this form, that you offer a stipulation that there is only one Dulien Corporation, a corporate defendant, involved, that its true name is Dulien Steel Products, Inc., of California, and that it is a California corporation, and that there is no other corporation involved in



any of the transactions in this complaint bearing the name of Dulien or similar ones.

Mr. Dasteel: I make such a stipulation, your Honor.

The Court: Is that agreeable to everybody?

Mr. Laven: Not to the Government, your Honor.

The Court: Then that is the end of that. Very well.

Mr. Bunn?

Mr. Bunn: I take it, your Honor, that since we have been here so many times on various and sundry points of this case, that it might be a constructive thing for me to make a fairly brief opening statement of facts, or would your Honor welcome that?

The Court: Since you were here last week I have read the pleadings through and the various memoranda. I have not [13] read any of the depositions. I think I have a general notion of what the lawsuit is about. It will require some clarification as to the legal positions asserted by each party because their counterclaims and, let me call them suppositive counterclaims, suppose a judgment is against me then I am entitled to recover against somebody else—I have not been able to trace all of those through yet. Everybody is in favor of somebody else winning as long as he does not lose.

Now it may be it would be exceedingly helpful if you could trace that through, or if you prefer, Mr. Bunn, you can make an opening statement as to what you expect to prove in more elaboration than you have done so in your pleadings.

Mr. Bunn: I think that would be well, and I make this request of the court, that if I appear to go into more detail than your Honor considers helpful, you will stop me, I am sure, but I don't care to recite the whole case at this time and I am sure you don't care to hear it, but I believe it is well to make a statement.

The Court: In your opening statement, to avoid objection by counsel if you should happen to assert something as a fact, it will be deemed that you have stated that that is what you expect to prove to be the fact?

Mr. Bunn: Yes, indeed.

The Court: Very well. [14]

Mr. Bunn: And, furthermore, my statement will not be a complete statement of every fact I propose to prove, but whatever I say here is a statement of my understanding of what the plaintiff expects to prove.

The Court: Very well.

Opening Statement in Behalf of the Plaintiff

Mr. Bunn: We expect to prove that the plaintiff, Mr. J. B. Londono, a resident and citizen of the Republic of Colombia, was in Los Angeles in the summer of 1946 for the purpose of locating and buying barbed wire to be sent to South America for use there;

That on the 11th day of July, 1946, there came to his attention the fact that Dulien Steel Products, Inc., of California, which I shall hereafter in my remarks refer to as "Dulien," was supposed to have some wire.

That on that day, the 11th of July, he himself went to the office of Dulien on South Alameda Street and there conferred with Dulien's manager, Mr. E. S. Grinstein, about the possibility of purchase by Londono of barbed wire from Dulien;

That he then and there learned in the conference with Mr. Grinstein that Dulien had barbed wire, unused Government surplus wire, coming from Honolulu, which with it coming Mr. Londono understood to mean on the high seas then;

That arrangements were then and there, on that day, July 11, made for the purchase of 2,700 tons of such wire at [15] the price of \$107 per ton;

That Mr. Londono left Dulien's office and on the next day, the 12th day of July, 1946, returned in person to Dulien's office, and that by or on that occasion there was prepared in Dulien's office a sale order bearing No. LA-712, Dulien's number, for the sale to J. B. Londono of 2,700 tons of such wire at such price;

That that sale order——

The Court: Do you have the original there?

Mr. Bunn: Yes, sir; I have the original.

\* \* \*

It is Plaintiff's Exhibit A to the complaint.

The Court: Very well.

Mr. Bunn: And Plaintiff's Exhibit A to the libel.

That the language of that document, that sale order, under the heading "Commodity" was unused



Government surplus barbed wire as purchased by seller from Interior Department;

But that on July 11th, the first day of Mr. Londono's visit to Dulien's office and before the sale order was [16] prepared, Mr. Londono was told by Mr. Grinstein, the manager, that this wire, which was available and would be sold to him, was good wire;

That it was good, black and galvanized wire, free from rust and covered with a rust-preventing grease, and at that time there were exhibited to Mr. Londono on the lot at Dulien's place rolls of wire, good wire, with nothing apparently wrong with them at all.

The Court: Galvanized and black?

Mr. Bunn: No; black wire, and samples were given to him of black wire, I mean cuttings as distinguished from the showing to him of rolls of wire. There were cuttings given to him of black wire, and he was told that all the wire would be as good as that which was shown to him, although some of the wire would be galvanized and some would be black.

In other words, it would be good galvanized wire and good black wire, with nothing wrong with it at all of either kind;

That it would in all respects be equal in quality to the exhibited coils and sample cuttings;

That Mr. Londono, in reliance upon and after examining the samples and after seeing the samples of rolls and examining the samples of the cuttings, and hearing and relying upon the representations made, accepted the offer and agreed to purchase

the quantity I have stated from Dulien. That was on [17] the 11th.

That on the 12th, when he went back and the sale order had been prepared, Mr. Dulien himself, who had not been there on the 11th when Mr. Londono talked with Mr. Grinstein, the manager, was there, and that Mr. Dulien himself, president of the corporation, I believe, told Mr. Londono that the wire coming was good, that he himself had been to Honolulu and had seen the wire in Honolulu, and that it was good and that he would like to be able to buy 50,000 additional tons of it if he could;

That in reliance upon representations by Dulien through Mr. Grinstein, and Mr. Dulien himself, Mr. Londono signed the sale order referred to as Exhibit A to the complaint, dated July 12, and that that sale order under another heading as to the quantity, says "approximately 2,700 net tons as follows: 1,350 net tons galvanized, 10 per cent more or less, 1,350 net tons black, 10 per cent more or less," and that in the initial conversations, which were the inducement to the signing of this order, he had been told that there would be half and half, that is, half of the 2,700 quantity would be galvanized, good wire, as I have stated, and the other half would be black wire, good wire, as I have stated; [18]

\* \* \*

That the sale order was signed "Dulien Steel Products, Inc., by E. S. Grinstein," and approved and accepted by J. B. Londono;

That the ship on which the wire was supposed to come was delayed;

That Mr. Londono learned of the delay and that before the ship arrived Mr. Londono was informed by Dulien that the shipment would not be 2700 tons but that it would be only 2300 tons;

That Mr. Londono, pursuant to that information and negotiations with Dulien, agreed that his total quantity which he would have to purchase, which he would purchase, would be 2000 tons and that instead of furnishing the money at \$107 for 2700 tons he would supply the money for 2000 tons.

The Court: What date do you propose to show that conversation, that modification of the agreement? [19]

Mr. Bunn: On July 26, 1946. I stated it was before the ship arrived. It was before Mr. Londono knew that the ship arrived, or it was before the ship arrived. We do not know at what hour. But at all events, that on July 26, 1946, which we now know and will show was the date on which the ship did arrive, defendant Dulien orally represented to plaintiff that the shipment of wire would be only 2300 tons.

Mr. Dasteel: Pardon me, if your Honor please. I think that there is no point involved there, that your complaint says that this was by mutual agreement. There is no question about that.

\* \* \*

Mr. Bunn: Well, the fact is that we will show that it was mutually agreed between Dulien and Londono that the shipment would be only 2300



tons and that defendant Dulien would retain for itself 300 tons.

The Court: Was that conversation before July 27th?

Mr. Bunn: Yes, sir.

The Court: Very well.

Mr. Bunn: That reduction in quantity, that mutual agreement for reduction in quantity, was before July 27th. And to that change Mr. Londono agreed, and therefore, in that [20] manner by said mutual agreement the quantity plaintiff had purchased was reduced to 2000 tons. However, he was given an oral option to take the additional 300 tons.

The Court: That does not enter into the matter.

Mr. Bunn: That the steamer was delayed and docked on July 26, 1946, at Pier A at Long Beach instead of at the Los Angeles Harbor, but there is no controversy on that location of the arrival;

That on July 27, 1946—by the way, that in the meantime Mr. Londono received from Dulien word that unless Londono completed his establishment of the letter of credit for the entire purchase price by a certain hour on the day of July 26, that the deal would be off;

That Londono, on the 26th day of July, then went into the Citizens Bank, foreign department, and discussed with Mr. Schroeder, the vice-president of the bank, who was and is in charge of the foreign department, the matter of completion of the establishment of the letter of credit;

\* \* \*

That he told Mr. Schroeder what he wanted to do

and why he wanted to do it, and what he intended to do with the wire, [21] and then he left the bank and went back on the 27th, having in the meantime obtained Dulien's approval of the completion of the letter of credit by the 27th rather than the afternoon of the 26th, and that on the morning of the 27th, which was Saturday, of July, 1946, he went back in the bank and completed the arrangements, that is that he signed an application for a commercial letter of credit for \$214,000 in favor of Dulien Steel Products, Inc., with its address in Los Angeles, for the account of J. B. Londono available by drafts at sight drawn at the Bank's option "on" you or your correspondent for 100 per cent of the invoice "cost." The drafts, according to the application for the letter of credit, must be accompanied by the documents listed below marked with an X, and that an X appears in the blank space provided therefor at the left end of a line which reads, "Full set of clean ocean bills of lading made out to order endorsed in blank, freight prepaid," and further down calling for commercial invoices evidencing shipment of 2000 tons of barbed wire in one shipment invoiced on basis of c.i.f. Los Angeles Harbor from Honolulu, T. H., to Los Angeles Harbor, credit to remain in force until July 31, 1946. [22]

\* \* \*

And that the application was signed by J. B. Londono, and at the same time there was prepared by the Bank its irrevocable credit No. 3645, the same number which the application bore, dated

July 27, 1946, directed to Dulien Steel Products, Inc., and reading: "Gentlemen, we hereby authorize"——

The Court: You need not read it. I have read it.

Mr. Bunn: And that that document by typewritten insertions into a printed skeleton form says that the draft must be accompanied by the following documents, full set clean on board ocean bills of lading made out to order blank endorsed, marked freight prepaid, commercial invoices evidencing shipment of 2000 tons of barbed wire, etc., in one shipment from Honolulu;

That on the back of that letter of credit was a full page printed form which set out a great many terms and which contained, when it was completed and signed, the typed insertion of the Bank's charge of one-fourth per cent with a minimum of \$10. Those were the only insertions other than the number, and that Mr. Londono signed that form.

The Court: That contains a provision in there upon which the Bank relies as an escape of liability?

Mr. Bunn: Yes, your Honor. [23]

\* \* \*

That the Bank agreed verbally to make Mr. Londono a loan of \$54,000, which would make up the difference between the \$160,000 and the \$214,000, and that there would be included in the loan the \$535 bank charge, which added that much to it;

That Mr. Londono left the bank;

That on that afternoon, Saturday, he went to the



Harbor—the ship had arrived; he had been informed in the meantime, on Friday I believe, that the ship had arrived—he went there but the hatches had not been opened, there was no one working there, it was Saturday afternoon, and he saw no wire, there was no wire on the deck of the ship;

That on Sunday he had no contact with any of the parties involved in the matter;

That on Monday morning, at an hour we will not be able to prove probably but early, Dulien's office, through some employee, sent somebody to Matson's office at Wilmington and paid the freight; [24]

\* \* \*

That in Honolulu, under date of July 12, which was the same date of the conversation between Mr. Londono and Mr. Dulien, himself, and the actual signing of the sale order, under date of July 12 Matson Navigation Company, as agent for War Shipping Administration, that is, berth agent for War Shipping Administration, had issued a straight bill of lading for 2300 tons of barbed wire, stated in pounds rather than tons, but it amounted to 2300 tons, showing Dulien as the shipper and Dulien as the consignee.

The Court: Are you saying that this was known to Londono?

Mr. Bunn: No, sir. I certainly deny that.

The Court: Very well.

Mr. Bunn: I am saying that I am going back now to pick up what I am going to recite about the 29th of July. But on the 12th of July a straight

bill of lading, not an order bill, had been issued as I have just stated.

The Court: What is the difference between a straight bill and an order bill? [25]

Mr. Bunn: An order bill is highly negotiable. An order bill carries the title to the merchandise. An order bill is the means by which, in the shipping business, the right to the possession of the wire can be expressed and proven and is the most highly negotiable document which we have in the shipping business.

The Court: In other words, it is, deliver to the order of so-and-so?

Mr. Bunn: Yes, sir, and that a straight bill of lading, which does not contain the language of an order bill, to the order of anybody, but is from one person to the same person or to another person even without order, that a straight bill of lading is, may I say, of relatively no importance so far as the title to the merchandise is concerned, and not negotiable. It smacks somewhat, but slightly, of negotiability, as I shall explain later, but it is not the negotiable document which an order bill of lading is;

That that was issued on July 12 and that likewise at or about—still in July but we will not be able to prove what date—there was likewise issued in Honolulu an undated order bill of lading on 1500 tons of barbed wire to come over on the same ship, the SS White Squall, this order bill of lading being issued by Matson, likewise as agent for the War Shipping Administration, to Gonzalez &

Blanco, an outfit in Los Angeles likewise purchasing wire to be shipped on the [26] same ship.

Gonzalez & Blanco's representative had been to Honolulu and had seen wire there and had picked out wire that he wanted and had told Dulien's people over there that he would take this wire as distinguished from this other wire, and that the order bill of lading on the Gonzalez & Blanco shipment was f.o.b. Honolulu so that Gonzalez & Blanco had to pay its own freight, but that the straight bill of lading from Dulien to Dulien provided that Dulien would have to pay his freight on that wire;

That it was apparently the wire which Dulien was shipping from himself to himself, that Dulien purported to sell to Londono but that Dulien did not tell Londono anything about the absence of an order bill on the shipment that Londono was to buy;

The barbed wire which the ship brought was exclusively barbed wire shipped by Dulien;

That nobody else shipped barbed wire on that ship;

That all the barbed wire that came over on that ship was shipped by Dulien from Honolulu to here and there is no confusion between that barbed wire and anything else.

The Court: Under two bills of lading?

Mr. Bunn: Yes; under two bills of lading.

The Court: The straight bill and the order bill of Gonzalez & Blanco? [27]

Mr. Bunn: Yes, sir.

That early on Monday morning, July 29, Dulien



caused to be paid at Matson's office in Wilmington the freight on the shipment covered by the straight bill, 2,300 tons, and that Dulien's men received from Matson's office at Wilmington then and there on the morning of July 29th a freight bill stamped showing payment of such freight, on what I may here now call the Londono shipment, although it was called there the Dulien shipment;

That instead of bringing away with him from Matson's office at Wilmington the bill of lading which, under Londono's demand, if it had been a correct one, would have been the document required to be delivered to the bank, Dulien's man left the original bill of lading, that straight bill, which I will call here generally non-negotiable, at Matson's office;

That that is the document which these nearly four years has been lost, but was discovered one week ago last night in Matson's office at Wilmington;

That the messenger, or the man from Dulien's office, comes back from the Wilmington office of Matson, that is, comes into Los Angeles, goes to the Citizens Bank, presents Dulien's draft for \$214,000, presents to the bank the freight bill stamped paid, presents no bill of lading whatsoever;

That \$214,000 is that morning, when those documents came to Dulien—— [28]

The Court: That was Monday?

Mr. Bunn: That was Monday.

The Court: The 29th?

Mr. Bunn: The 29th.

The Court: The money was paid?

Mr. Bunn: The money was paid that morning.

But Mr. Londono did not at any time on July 29th go in the Citizens Bank; his instructions had been given on Saturday;

That in the morning, however, of Monday, July 29th, Mr. Londono, at the Clark Hotel preparing to keep an appointment with a doctor in Los Angeles, received a telephone call from the bank, from Mr. Moran;

That Mr. Moran was employed—I am now saying to the court what we will prove to the court—that Mr. Moran was a clerk employed in the foreign department of the bank;

That his immediate superior was Mr. Glenn Powers, who was co-manager or assistant manager of the department;

That Mr. Schroeder, with whom Mr. Londono had carried on his negotiations on the preceding Friday and Saturday, was the manager of the department;

That Mr. Schroeder may or may not have been in the bank when Dulien presented the documents, but at all events they were not presented to him and Mr. Schroeder did not see them;

That Mr. Glenn Powers, next in authority, I believe, was [29] temporarily away from his desk or the department and that Mr. Powers did not on presentation of the documents see them;

That they were presented by Dulien's man to Mr. Moran. Mr. Moran spoke and speaks Spanish and had come originally, I believe, from Porto Rico, but he had come here from New York;

That Mr. Moran, at the time in relation to the

delivery of the documents by Dulien, to the presentation of the documents by Dulien to the bank, which we cannot definitely fix, but still in the morning of Monday, the 29th, calls Mr. Londono on the telephone at the Clark Hotel and in Spanish talks to him and tells Mr. Londono that the shipping documents had been presented, that they showed a shipment of 2,300 tons, whereas Mr. Londono's letter of credit established on the preceding Saturday called for the payment for 2,000 tons, and asked Mr. Londono if that was all right, in substance, and that Mr. Londono, in Spanish on the telephone, told Mr. Moran that that was all right because he had agreed orally with Dulien that he would buy and pay for 2,000 tons and that he had established the credit on Friday with Mr. Schroeder for the 2,000 tons and that that was all right. That conversation ends. The phone was hung up.

That thereafter and still on the morning of Monday, the 29th, and before Mr. Londono had yet left the hotel to go to his doctor's appointment, the phone rings again and Mr. Moran is again on the phone and asks Mr. Londono if by reason of [30] that change in quantity it will be necessary to have first a letter from Dulien about the difference, and that Mr. Londono says no, that that is understood everywhere and that it is unnecessary. The phone hangs up and that is the end of that conversation. In substance that is all that was discussed in either or both of those telephone conversations between Mr. Moran and Mr. Londono.

That Mr. Londono goes to the doctor's office and



later in the day, late in the afternoon of Monday, still not having gone near the bank on Monday, goes to the dock, to Pier A at Long Beach, where he had been on Saturday afternoon and he had been unable to see any wire;

That by that time there has been commenced but is temporarily stopped, some unloading. In other words, there was no unloading going on while he was there, he was late, but that he saw some relatively small quantities of wire, there was no identification on it, he did not know whether it was wire for him or whether it was wire for somebody else, but there was wire there;

That on Monday, the 29th, the bank—first, the bank had previously on Friday and Saturday been informed that Mattoon & Company, brokers in Los Angeles, at the H. W. Hellman Building, would ship the wire in due time for Mr. Londono to South America, and the bank had been told that they could deal with Mattoon & Company as the forwarders who would send [31] it to South America on his behalf, yet Mr. Londono has not by that time signed any note for the \$54,000; it has all been by arrangement as I have stated. By the way, Mr. Londono had earlier in the spring of 1946 dealt with the Citizens National Bank.

\* \* \*

That on Monday, the 29th, after the money was paid, the bank wrote a letter to Mattoon & Company and dated that letter July 29th, the date on which it was written, instructing Mattoon what to do for

the protection of the bank's interests and giving general instructions about the shipment of the wire for Mr. Londono;

That that letter was transmitted to Mattoon & Company and that it was received by Mr. Sweeney of Mattoon's office;

That on Tuesday, the 30th of July, Mr. Sweeney of Mattoon's office received a telephone call from the bank, from Mr. Schroeder himself, asking that Mr. Sweeney bring back as soon as possible (I am stating this in substance) the letter which had the day before been written and the enclosures or the documents that went with it.

Now on the 29th, Monday, the bank had transmitted this letter to Mattoon and the letter had stated that the bank was [32] enclosing a bill of lading No. LA-29. The letter did not enclose a bill of lading, but enclosed the stamped paid freight bill.

The Court: Exhibit D to the complaint.

Mr. Bunn: Yes, sir.

That on Tuesday, the 30th, when Mr. Schroeder calls and asks Mr. Sweeney to bring back the letter and the documents, Mr. Sweeney, in substance, says that he is busy and can't do it at the moment, and that he will do it, and he did not take it back on Tuesday;

\* \* \*

That on Wednesday, the 31st of July, Mr. Sweeney goes into the bank, to Mr. Schroeder at the foreign department, accompanied this time by Mr. Londono, and returns the letter [33] dated July 29th and the stamped freight bill to Mr. Schroeder,

and that that letter is destroyed by the bank and that the carbon copy of that letter is destroyed by the bank.

Now I stated that it would appear that that letter contained a statement by the bank to Mattoon that the bank was enclosing the bill of lading. We will not be able to prove that that letter so stated, but the bank's second letter and the testimony of the bank's men will state that it so included a statement that it enclosed a bill of lading. Mr. Sweeney will testify that he does not know whether that letter referred to a bill of lading or not, but he does know that the document which accompanied it was a freight bill and a freight bill only.

Anyway, that letter was destroyed by the Bank and the carbon copy of the letter was destroyed by the Bank on the 31st, and on the 31st the Bank caused to be rewritten—let's say caused to be written—another letter to which they gave the date of July 29th, although it was written on July 31st, and that that letter did contain a statement that it accompanied or enclosed an original bill of lading No. LA-29, and that that letter was transmitted to Mattoon and was stamped, and the copy of it was stamped, by Mattoon's office with Mattoon's stamped receipt and signed by Sweeney as having been received and with enclosures;

That this is Wednesday, that as Mr. Sweeney and Mr. [34] Londono are in the bank on that occasion Mr. Schroeder takes them down to the main floor where the note department is and there are prepared for Mr. Londono's signature and Mr. Londono signs



a promissory note for \$54,535 and a collateral agreement describing the wire and another letter is written on that date to Mattoon, still another letter, with instructions from the Bank to Mattoon as to how to protect the Bank's interest in the wire and what to do;

That Mr. Londono leaves the bank, Mr. Sweeney goes back to his office, Mr. Londono goes to the Harbor, that is, he goes to the Moore-McCormack dock at Wilmington, not to Pier A at Long Beach, and at the Moore-McCormack dock at Wilmington he sees wire on cars which he then and there learns has been in the meantime, on Monday, Tuesday or Wednesday, removed from Pier A at Long Beach where the unloading of the SS White Squall was, to Moore-McCormack dock for his account to go to South America, and then and there on the 31st for the first time does Mr. Londono see any wire which can be identified to him as his wire, and that the wire is so badly rusted that he weeps, may I say, and he goes back to town. This is late Wednesday afternoon.

That Thursday morning August 1st, in downtown Los Angeles, he writes a letter to Dulien and he calls Dulien's attention to the fact that the 2000 tons of barbed wire which have arrived under bill of lading LA-29, which he refers to, [35] still not knowing that the Bank has not received a bill of lading, that is, not being cognizant of the fact that the Bank has not received the bill of lading——

\* \* \*

(Short recess.)

The Court: Mr. Bunn?

Mr. Bunn: Your Honor please, I failed to say, and I was wrong when I said that Mr. Sweeney went back to his office and Mr. Londono went to the Harbor. Mr. Sweeney and Mr. Londono together left the bank after Mr. Londono had signed the note and the collateral agreement, and they had in that conference been instructed or requested by Mr. Schroeder at the bank to have the document, which was in the second letter referred to as bill of lading LA-29 but which was a freight bill, to have that paid freight bill endorsed on the back by Dulien, so in compliance with Mr. Schroeder's request Mr. Sweeney and Mr. Londono left the bank, and before Mr. Londono went to Moore-McCormack dock but en route there, went to [36] Dulien's office and told Mr. Stanley of Dulien's office of the bank's request, and in Mr. Londono's presence and that of Mr. Sweeney of Mattoon & Company, Mr. Stanley takes the paid original freight bill, puts it in his typewriter with the red ribbon and writes on the back of it, "This bill of lading endorsed in full to J. B. Londono for not more than 4,000,000 pounds, balance of shipment to be picked up by us. Dulien Steel Products, Inc., of California," and signs it "L. P. Stanley" and delivers it back then and there.

The Court: Who was Stanley?

Mr. Bunn: Mr. Stanley was an employee of Dulien's.

The Court: Where was that done?

Mr. Bunn: At Dulien's office.

The Court: In Londono's presence?

Mr. Bunn: In Mr. Londono's presence on Wednesday afternoon.

The Court: They went from the bank to Dulien's office?

Mr. Bunn: Yes, they went from the bank to Dulien's office to comply with the request of Mr. Schroeder at the bank that they have this document endorsed on the back.

The Court: Your position is that at that time Mr. Londono did not know, and was not told by the Bank, that the bill of lading in compliance with his instructions to them on a letter of credit had not been delivered to the bank?

Mr. Bunn: That is my statement and that is my representation, and that up to that time and beyond, as I shall show, the Bank still referred to this document in its transmittal letter also——

The Court: Is it your position that he did not know on July 31 that the Bank had paid Dulien the money on July 29?

Mr. Bunn: No, your Honor. I have been so close to this for so many years that I am making this statement from my recollection of my study of it, and rather than from the prepared statement because I would never get through reading the prepared statement.

On the 29th, Monday, after the Bank had paid the money, the Bank wrote a letter, which I failed to mention a while ago, to Mr. Londono, dated July 29th, stating (part of it I will read): "We have today made the following payment for your account," then it is blurred, "Dulien Steel Products," and



they set out the \$214,000. In other words, it is an advice from the Bank to him dated the 29th, on Monday, that they have paid and that this payment had been made against the following documents—that is the Bank's letter to Londono—one bill of lading and one invoice evidencing shipment of 2000 tons barbed wire, and Mr. Londono signed a copy of the letter, although no document was delivered to him until after the 30th of July.

In other words, Mr. Londono was not in the bank at all on July 29th. [38]

The Court: When he got that document which he signed, your position is that he did not then get the documents referred to as being enclosed or see them?

Mr. Bunn: That is true, that the documents were sent to Mattoon—whatever document was sent—the freight bill—was sent to Mattoon, and Mr. Londono was thereafter asked by the Bank to sign a receipt for the documents which were related in the letter.

\* \* \*

Mr. Bunn: But at all events, on Wednesday, in Dulien's office, pursuant to the Bank's request, the reverse side of the freight bill is so endorsed as I have stated, and from Dulien's office then, still in complete ignorance of the fact that no bill of lading had been received by the Bank from Dulien's office, Londono goes to the Moore-McCormack dock and, for the first time, as I stated just before the recess, sees some wire which is identified to him as his, and is disappointed, to put it mildly;

That on the morning of August the 1st—— [39]

The Court: Is it your position that at that time was the first time that he observed the rusty and bad condition of the wire, or any of it?

Mr. Bunn: Or any of it identifiable as his.

The Court: I understand.

Mr. Bunn: Yes, sir, on July 31st at the Moore-McCormack dock.

That immediately, that is, the next morning because it was late in the afternoon, he writes a letter to Dulien, dated August 1st, and I think himself took it to the post office and registered it to Dulien calling attention to the fact that under the terms of the agreement it was understood that the barbed wire would be half galvanized and half black, both to be in good condition, and stating that upon Mr. Londono's inspection of a portion of the shipment already discharged it appears that there is greater than 50 per cent of black wire and about 50 per cent rusty or in poor condition, that "if the balance of the lot is in similar condition when discharged I must request the opportunity to renegotiate the original price paid for this merchandise," and signs the letter;

That Dulien received that letter in due course, dated August 1st (August 1st was Thursday);

That there is in process in one degree or another a strike or strikes down at the Harbor; [40]

That they unloaded for a few hours or on one day and then they stopped for a while, and several days elapsed in there before the wire was unloaded, all of it, but that within that time, or shortly there-

after, after Mr. Grinstein of Dulien gets the letter I have just referred to, he accompanies Mr. Londono to the dock at Long Beach and he, Mr. Grinstein, the manager, then sees the wire, sees its rusty condition, expresses his surprise about its condition——

The Court: Who?

Mr. Bunn: Mr. Grinstein—and suggests to Mr. Londono, and then writes a letter dated the 7th day of August to Mr. Londono, saying, “Confirming conversation you are to immediately start loading your wire, separating the rusty material, leaving same on the dock. As quickly as this is finished we will remove the 300 tons and will renegotiate the balance of the black when this material is removed.” This is signed Dulien Steel Products, Inc., by E. S. Grinstein, and dated August 7th.

That all this time Mr. Londono does not know that no bill of lading at all, particularly no order bill of lading, has been received by the Bank.

In the meantime, Gonzalez & Blanco, desirous of getting possession as soon as possible of their portion of that shipment on the White Squall, have a man, Mr. Russell Mather, working for them, who has been to Honolulu and has then and [41] there and in Honolulu, picked out what they wanted on the dock at Long Beach, supervising or at least directing the allocation from the ship and from the dock of wire for Gonzalez & Blanco;

That Mr. Mather is there practically all the time when the unloading is going on;

That Mr. Mather saw to it, and Mr. Mather will testify, that much of the wire was taken direct from



the ship to cars for Gonzalez & Blanco, some of it went from the ship to the floor of Pier A at Long Beach;

That at some time within those few following days, say within the week or 10 days after July 29th, somebody wrote with chalk somewhat in a semicircle around one large pile of mixed-up wire, that is, not segregated as to black or galvanized, wrote the word "Dulien" or "Dulien Steel Products," some indication in chalk of the name of Dulien, and at, around or near another large pile of wire on the dock the words in chalk "Gonzalez & Blanco";

That the wire had been actually loaded on the ship in Honolulu indiscriminately, that skips or pallets, as they call them, had been brought to the dock in Honolulu, and one pallet would have galvanized wire on it, another pallet would have black wire on it, but that it was put in the bottom of the ship indiscriminately;

That when the wire was unloaded from the ship—— [42]

The Court: That is, without discrimination as between black or galvanized and without discrimination as to whether or not it was under the straight bill of lading or order bill of lading to Gonzalez & Blanco?

Mr. Bunn: Yes, sir, with no discrimination anywhere.

That it was unloaded at Pier A, Long Beach, still likewise indiscriminately and piled up in tremendous piles there, good, bad, indifferent, black, galvanized, rusty, badly rusty, more badly rusty, and that there

was no distinction after those chalk markings were put there—and we do not know who put them there—no distinction between the composition of the two so marked piles, but that Gonzalez & Blanco began, early in the game, to pick out the better of the wire. They were entitled to 1500 tons out of a total shipment of 3800 tons. Londono was entitled to 2000 tons and Dulien was to take back the 300 tons.

That Londono on several occasions was down there and that when he saw what was happening, that Gonzalez & Blanco were taking the better of the wire out of the piles and he didn't know who had marked those piles, he on a day or so after the 12th day of August, which was Monday, rushes to his lawyer's office, and he had the same lawyer then unfortunately that he has now, rushed to his lawyer's office and cried out that they are letting Gonzalez & Blanco take the good wire, and his lawyer—this will be testified to by other [43] people than his lawyer—communicated with Mr. Banning of Matson's office;

That Mr. Londono's lawyer also communicated immediately with the San Pedro lawyer for Gonzalez & Blanco to find out what was wrong, and he will testify, and that Mr. Londono in that manner learned, and it will be shown here and testified to, that upon the discovery by Gonzalez & Blanco of the poor condition of this wire Gonzalez & Blanco had their lawyer in San Pedro immediately get in touch on the telephone with the War Shipping Administration office in San Francisco, Mr. Ball, who was

known to their lawyer, George Stephenson in San Pedro;

That Gonzalez & Blanco's lawyer acquainted Mr. Ball with what was happening and insisted, so Mr. Stephenson will testify, that they should be permitted to take good wire, that Gonzalez & Blanco held an order bill of lading, it was highly negotiable—and this is all in the conversation—and had bound itself to deliver clean, good wire to Gonzalez & Blanco and that they demanded the right to take it;

That Mr. Ball promised Mr. Stephenson that it would so be.

In the meantime, Mr. Londono's lawyer is communicating, I don't know at the same hour but within the day, with Matson's Los Angeles office, Mr. Banning, and Mr. Banning promises me that Mr. Londono will be permitted to select a cross-section, the same as Gonzalez & Blanco, and the next day Mr. Banning calls me and apologizes for having to reverse himself and to tell me that they will not be permitted to let Mr. Londono select and take out any good wire until Gonzalez & Blanco's order has been fully met and filled because, and he so tells me, Mr. Londono has no bill of lading and Gonzalez & Blanco do have a bill of lading, and that the reason Matson has to reverse its order is that the War shipping Administration office in San Francisco advised Matson that Mr. Londono has no bill of lading and Gonzalez & Blanco do have, and that Gonzalez & Blanco will have to be permitted to take the good wire from the whole shipment before Mr. Londono is per-



mitted to take anything except what is left over after the good has been taken from the bad because he has no bill of lading. That is the reason War Shipping Administration gave to Mr. Stephenson, Gonzalez & Blanco's lawyer, why they were doing it for his client and for refusing to do it for Mr. Londono.

That Mr. Londono weeps some more as he sees what is happening, but still does not know that there has been received no bill of lading. He has gotten that information from Matson. So then he begins an investigation to find out what they are talking about, and he goes to Mr. Sweeney of Mattoon & Company and asks Mr. Sweeney what documents the Bank turned over to Mattoon & Company on his behalf. [45]

May I interject. We contend, and shall prove, that Mattoon & Company were the agents of the Citizens Bank until the actual delivery to Mr. Londono and turning over into his possession, with the Bank's consent, of the wire, any portions of it, and that from the time the wire or any portion of it is actually released by the Bank to Mr. Londono, from that point on Mattoon & Company became and acted as the agent of Mr. Londono to ship to South America.

The Court: Your position is that Mattoon & Company's first obligation was to protect the Bank?

Mr. Bunn: Yes, sir, and the documents so show.

The Court: Very well.

Mr. Bunn: And that Mr. Sweeney produces, or shows the freight bill, which they have still had

before them as they made the trip down to Dulien's office and got the endorsement, and Sweeney said that is all he received, and then Mr. Londono comes to his lawyer's office and tells him that sad story and says, "This I understand is all the Bank received and this is not a bill of lading."

Then Mr. Londono and I, his lawyer, present ourselves at the foreign department of the Citizens Bank. That is on August 24th, on Saturday, August 24th. And on the preceding day, Friday, in further investigation to find out about the truth of Matson's statement that he had no bill of lading, Mr. Londono and I had gone to the Wilmington office of Koppel [46] Brothers and asked Mr. Koppel, who had been employed by Mattoon to do some segregating for the short time that segregation was permitted before Matson changed its order and told Mr. Koppel what has been brought to his attention, and Mr. Koppel says, "This is not a bill of lading, this is a freight bill only." That is on Friday, the 23rd.

So the next morning immediately Mr. Londono and I go to the bank and confront Mr. Moran with the situation that is so presented and Mr. Schroeder is not there at the time—Mr. Schroeder has, in the meantime, on August 2nd, gone on his vacation for a month, from which vacation he does not return until the day after Labor Day in September, which return date I think was September 3rd.

Mr. Powers, I believe, was not in the bank at the time of this last conversation. Anyway, Mr. Londono and I go and we tell Mr. Moran what we have learned and Mr. Moran insists then to us that he

paid on a larger bill, a larger paper than this freight bill that we showed him, and that that is not the document he paid on but that he paid on a bill of lading and it was larger than that.

Mr. Grinstein, in the meantime, has gone to Honolulu and there is nobody out at Dulien's office from whom any satisfaction on the situation can be obtained except Mr. Stanley, and for some days we await the return of Mr. Grinstein to find out more definitely if we can. [47]

Mr. Grinstein comes back and on September 4th Mr. Londono and I go to Dulien's office and, in Mr. Londono's presence, I acquaint Mr. Grinstein with the sad situation. He has been gone for days and days, and Mr. Dulien is gone, and Mr. Grinstein hears the story from me and says to us—I think I am quoting word for word now—"The money is ours," meaning Dulien, "the wire is yours," and that was as far as we got, except we said, "Mr. Grinstein, but did you pay on a bill of lading? We can't find that you did." And Mr. Grinstein calls Mr. Stanley in, the man who days before had written in red type on the back the endorsement on the freight bill, he calls Mr. Stanley in and, in our presence, Mr. Londono's and mine, Mr. Grinstein's and Mr. Stanley's, Mr. Grinstein confronts Mr. Stanley with the situation and Mr. Stanley conceded, stated that he had made a mistake, that he had left the bill of lading at Matson's office with Matson's man, was the language he used I believe, at Wilmington, and that he had presented to the Bank the freight bill only, that is, without a bill of lading,



and had been paid and that the payment had been made on Dulien's draft supported by the paid freight bill and without a bill of lading.

Then Mr. Grinstein said some things to Mr. Stanley that I don't need to say here. Mr. Londono will tell about that.

Then we went back to the bank and requested, I believe, a conference, and on a day in September, in the latter part, [48] we had a conference at the offices of the bank, with Mr. H. D. Ivey, Mr. L. O. Ivey, Mr. Fostvedt, vice-president; Mr. Emhoff of the foreign department; Mr. Schroeder, vice-president, acquainting them with the situation, and with Mr. O'Neil, Mr. Frank O'Neil, who was then acting in this matter as counsel for the Bank;

That it was then and there taken under consideration by the Bank as to what they would do with Mr. Londono's request as then presented, that he be permitted——

Mr. Londono: It was the 24th of August, not in September.

Mr. Bunn: He corrects me and says it was on the 24th day of August that we had the meeting with the Bank before we had received the confirmation from Stanley which I put out of order there.

On the 24th day of August then we asked that the Bank permit him—we did not then know, nor were we sure then, about the absence of the bill of lading—but that the Bank permit him to ship some of the wire to South America without being required, as the shipments were successively made, to pay the Bank a release price equal to the proper

proportion of its \$54,000 of the wire so shipped, so that he could stop dock charges and expenses and try to salvage something, and that the Bank took the request under consideration, and that the Bank very shortly thereafter reported to me—Mr. [49] Fostvedt will so testify, I think—that the Bank would so consent, and that it was understood and agreed that there would be no prejudice to the rights of any of the parties if we joined in that effort to salvage what we could salvage;

That some shipments were made within those weeks under that arrangement, that there had first been loaded for shipment 112 tons immediately after the arrival of the boat, and sent down to Moore-McCormack's dock before this arrangement with the Bank was made but after the money was paid;

That on September 10th—I am leaving out some details—but by September 10th there has been and was reduced to writing an agreement for the shipment and salvaging of approximately 1000 tons of the wire by Mr. Londono in South America and without prejudice to the rights of any of the parties, and that that agreement was incorporated in a letter which I directed over my signature as his attorney to Dulien and Matson and the Citizens Bank. [50]

\* \* \*

April 18, 1950—2:00 P.M.

I erroneously stated that Mr. Schroeder, vice-president of the Bank in charge of the foreign department, was present at the conference attended

by Mr. Londono and me and Mr. Frank O'Neil, advising the Bank, with certain bank officials, on the 24th of August. Mr. Schroeder, as I had previously stated here this morning, was on his vacation from the 2nd or 3rd of August to the 3rd, I believe, of September. Mr. Schroeder was not present in that conference we then had on the 24th with certain officials of the bank. And it is my mistake in recollection this morning.

\* \* \*

I wish, at this time, to state that we will show that all [52] movements of wire, all exercise of dominion over wire by Mr. Londono prior to the conference with the bank officials on August 24th, was without knowledge on Mr. Londono's part that the Bank had not received a bill of lading.

The Court: That is to say, that August 24th is the first date that Mr. Londono found out the Bank had not received a bill of lading?

Mr. Bunn: Not exactly, if your Honor please. That by the time of that meeting Mr. Londono had been told, and was suspicious of the fact that the Bank had not received a bill of lading, but not until September 4th that he knew from Mr. Stanley, who had made the payment, but that at all events Mr. Londono up to and prior to that morning of August 24th had not known. He had been told, as I stated this morning, Matson had reported to me that the reason that they wouldn't let him select was because he didn't have a bill of lading. [53]

\* \* \*

But the point I want to make now, if I may, is



that from and after the 24th day of August, on which date was held the conference with the officials of the bank, including the president, Mr. H. D. Ivey, from and after that time there was no movement of any of the wire by Mr. Londono without the knowledge and consent of the Bank and Dulien, and without the knowledge of Matson.

\* \* \*

The amount of wire ultimately received by Mr. Londono was 81 tons short of 2000 tons. It is set up in detail in the complaint. We will not be able to show where the 81 tons went specifically. We will show that during the course of the disposition, as I call it, of salvage by Mr. Londono, [54] which spread over some months, there was removed by Dulien some wire. Under the writings Dulien was at liberty, if the shipment had been complete, 2300 tons, to remove 300 tons. How much Dulien removed we may not ourselves, independent of Dulien's witnesses, be able to prove. But at all events there was released to and disposed of in one manner or another by Mr. Londono 1919 tons, which is 81 tons short of 2000;

\* \* \*

Mr. Bunn: Now, after it was believed by Mr. Londono after September 4th that the Bank had received no bill of lading, a course of conduct was planned, outlined by his counsel and carried on with full knowledge of all parties, under which course of conduct every effort was made to dispose of the

wire then on the dock for whatever could be obtained for it;

That Mr. Londono, himself, remained here during those [55] weeks;

That he made every reasonable effort to find purchasers for it at, may I say, any price but not meaning that it would have been sold for less than anybody would have paid for it, but that in our inability to make a proper disposal of it at anything like what all parties considered a proper figure, there was received from Gonzalez & Blanco, who had received the other portion of the wire, a suggestion that if we would let them pickle some of this wire, that is, have it treated, cleaned, a fairly expensive process, they would then determine what they might pay for the wire and take it off our hands.

With the full knowledge and consent of Dulien and the Bank, and with the knowledge of Matson, we then let Gonzalez & Blanco take 25 tons for experimental purposes, or pickling, cleaning purposes, for which 25 tons Gonzalez & Blanco agreed to pay \$65 per ton.

They took the 25 tons, they had it pickled, they reported back to us all that they would not pay any more for the approximately, we thought, 1000 tons remaining on the dock. Your Honor will appreciate the fact that we couldn't tell by looking at it exactly how many tons was in the big pile. But they said that they would pay \$51 per ton.

By agreement then, by written contract, the Bank and Dulien agreed, and Matson knew all about it

and did not object, that Gonzalez & Blanco would take the remainder of the wire at [56] \$51 per ton.

Gonzalez & Blanco thereafter had difficulty in moving the wire from the dock, strikes were on from time to time, the charges were running up, and they agreed also that by reason of delays and moving it that they would pay \$51 per ton and \$1000 additional in cash to cover some of the dock charges down there.

They had trouble moving it, as I say, and by, I think, the early part of December they were able to move—no, he had a deadline on the contract, that unless they could move it by a certain date in December that they would pay anyway. The date came and had to be extended, I believe, on account of strikes, but the point I want to get over is the fact that after Gonzalez & Blanco had moved a total of some 700 and some-odd tons, they reported to us that they wouldn't take the balance of it, that it wasn't even worth pickling, and they wouldn't take it at any price. That is what they said then.

We got together then, we lawyers and parties, and by that time Mr. Londono, I believe, had gone to South America but he left power of attorney with me to move the stuff if we could and, to make a long story short, there was about 134 tons of it that Gonzalez & Blanco wouldn't take.

So I obtained an agreement from Dulien and the Bank, and gave Matson notice of it, and we let Gonzalez & Blanco out of [57] their contract of \$51 a ton, as far as that part of it is concerned, likewise without prejudice to any of our rights;



That thereafter, as late as the spring of 1947, this wire was still down there, nobody wanted it, nobody was willing to pay the dock charges on it, some of it had been moved from a pier at Long Beach to another place over in Wilmington, and so I called together the lawyers, and Mr. Dasteel representing Dulien went there with me, the Bank declined to go but had knowledge of the trip, and we looked at what was left and it was then agreed, and the agreement was thereafter executed, I mean carried out, and the Bank agreed to it, that that remaining amount there was no good to anybody would be sold on a new deal to Gonzalez & Blanco for \$4.50 per ton;

That there was still some 25 tons, I believe, that had to be moved off the dock, and it was moved and sent to South America, or Mexico or someplace, and we will show exactly what was obtained for that, but that was with consent of all parties without prejudice, except that Matson didn't consent, but they knew about it.

I failed this morning to state that not only was the Bank told by Mr. Londono what his purpose was in the purchase of this wire, and where he intended to send it, but that Dulien likewise was told and knew of his purpose in the conversations that he will testify to on July 11th and July 12th;

That there is a difference in the claims of the [58] plaintiff against the several defendants in that claims made against Dulien and the Bank are not for the losses occasioned on account of the difference in the value, the price paid of \$107 per ton and

the market price at Los Angeles of the wire that was received, but also for the loss of anticipated profits because of the fact that both Dulien and the Bank had been informed by Mr. Londono of his plans to send it south and knew the circumstances in regard thereto, but that no claim could properly be made or supported against Matson or the Government on that account because there was no representation by Mr. Londono to Matson or the Government in regard to his intention and purposes in selling, and that I think is the key to the question of recoverable profits. [59]

\* \* \*

In other words, Matson in its answers to interrogatories says that the bill of lading was dated the 12th, it was actually issued the 19th, but that as early as the 10th Castle & Cooke, who they stated elsewhere in their answers, was Matson's agent, was advised that the wire held by Inter-Island was more or less damaged by rust.

\* \* \*

Now it will develop and be shown in this trial that Mr. Dulien himself in Honolulu had had much of the wire treated with diesel oil to cover up the rust, that the men who treated it were told what to do. The depositions Mr. Laven took in Honolulu will so show, that they were told to do it thoroughly, that they were told that if any rust appeared after oiling it they must oil it again; that Mr. Dulien himself in Honolulu [61] told them that.

But the depositions will also show, particularly

the deposition of one witness—two witnesses—that after having made that effort to cover up the rust on the wire, that the rust was still visible. Different witnesses will give different statements in those depositions about the extent of it which was visible.

But other witnesses in depositions that I took over there, an independent shipping agent who saw the wire, will testify that it was not concealed and that you could tell by looking at a pile of it that it was rusty.

So Matson under those circumstances—Matson's agent under those circumstances—issues, we believe, a clean bill of lading on that merchandise. The law requires that the carrier show exceptions on a bill of lading, indicating the extent to which the merchandise therein described is not in apparent good order or condition, and the bill of lading form states that it is in good order and condition except as otherwise herein noted.

Matson made no notation of exceptions. Therefore the representation made by what we believe to have been a bill of lading that they issued was affirmative and positive that the goods were in good order.

The Court: Is it your position that the obligation of Matson as a shipper is the same under a straight bill of [62] lading as it is under an order bill of lading, that is, to indicate the exceptions to the apparent good order and condition?

Mr. Bunn: I think the law requires that they show exceptions on either class of bill of lading.

The Court: Very well.



Mr. Bunn: But the practice, and arising out of the fact that an order bill of lading is a highly negotiable document, beyond which nobody needs to look and upon which anybody in the commercial world is at liberty under the law and practice to depend, because that is the case with an order bill and that is not the case with a straight bill, the carriers themselves regard straight bills as of little, if any, importance, but order bills of the utmost importance.

The Court: Your position, nevertheless, is that the law requires them to give the same importance to that statement in either a straight bill or an order bill?

Mr. Bunn: The law requires that they note exceptions.

The Court: The same importance in one as the other?

Mr. Bunn: There is no distinction that I know of. [63]

\* \* \*

Mr. Bunn: We will show that after the ship got here that the unloading was done under the direction of Matson, that a stevedoring concern at Long Beach, the Transmarine Terminals, actually unloaded, that Matson gave instructions to Transmarine Navigation Company, and Transmarine gave instructions to Marine Terminals, and that Matson at all times had the last word, let us say, as to what to say about the actual disposition of the wire to the owners. [65]

The Court: As to what went on and what came

on and when and where it went afterwards, is that your position? That Matson had charge of what went on the boat?

Mr. Bunn: Yes, sir.

The Court: And how it went on, that is to say, the channels through which it went legally, and what came off and where it sent afterwards?

Mr. Bunn: That is my understanding; yes, sir.

And in line with that, we will prove that in the midst of this controversy I talked about this morning of the selection, or the right to select by Gonzalez & Blanco in priority over Mr. Londono, that Matson Navigation Company, through its Mr. Ford at Wilmington, actually wrote a letter of instructions to Transmarine Navigation Company, instructing Transmarine to see to it that Gonzalez & Blanco's 1500-ton order was filled first before Mr. Londono was permitted to select. [66]

\* \* \*

That the wire was so bad that some of it could be broken by hand, and I shall bring into the courtroom, if the court please, four rolls of wire, hundred-pound rolls, if I am so permitted to do—— [67]

\* \* \*

That the negligence of the Bank in the mistaking of the freight bill for the bill of lading, combined with the negligence of Matson Navigation Company in issuing a, what we call—they take offense at me for this—a false bill of lading to result in the damage to Mr. Londono; that however, if the Bank had followed Mr. Londono's instructions——

The Court: If they had followed the contract.

Mr. Bunn: Yes, if they had followed the contract, which was the letter of credit, and had done what under the terms of that letter of credit in accordance with all the shipping and commercial customs throughout the world, Mr. Londono would have still had his money because the Bank would have refused when Dulien's man came there with the paid freight bill to pay him a dime, and the Bank would have said, "Where is the clean on board order bill of lading," and there wasn't any, and Dulien couldn't have supplied one, I concede now, at least we don't learn of any in existence, the only bill of lading that we have been told about in any of these proceedings of which we have been shown any copies, is not the kind of a bill of lading which was under the contract required, and Mr. Londono would have still had his money. [69]

\* \* \*

Now we will show about the wire that the wire was viewed here by almost everybody—as the Mexicans say, "todo el mundo"; by all the world—that people came to look at it, that it was checked, appraised, examined by more than one concern, that Toplis and Harding, sub-agents for Lloyd's, but in their individual capacity, at one time in August examined the wire, made a report on the condition of it from a cursory examination and without taking it out roll by roll, that the reports were uniformly terrible, that there was——

The Court: You mean the reports were uniformly terrible?



Mr. Bunn: I mean that the reports were that the wire was terrible, although they didn't use that word.

But Toplis and Harding's man who made the report will testify that he could break some of it with his bare hands. The wire was so yellow with rust that I am ashamed to produce it as barbed wire into this courtroom, but I shall.

That Mr. Londono, in every conceivable fair effort to reduce the loss, after there was nothing else for him to do, and after his money was gone and when nobody else was willing [71] to exercise any dominion over it, and they all in substance said, "Mr. Londono, it is on the dock and it is yours," still made every possible effort to get as much for the wire as he could, keeping everybody at all times informed, and that as a practical proposition he had the approval of the defendants in so doing, although, as I stated so many times, without Matson's actual consent but without any objection on Matson's part.

That his losses are set out in the complaint, and although not set out in the complaint the amount that he actually received upon the shipment to South America, that is set out in his answer to the Bank's interrogatories, my contention having been, and heretofore having been expressed before the court, that the measure of Mr. Londono's loss was twofold, the difference in the price paid and the value at Los Angeles, the place of delivery, and that it was unimportant what he may have obtained for it elsewhere, but in the answering interrogatories

as directed he set up that he received in South America \$75 per ton f.o.b. Los Angeles, that is, with the shipping expenses from Los Angeles to Colombia paid by the purchaser, and that his losses were of course the calculated differences all the way through. [72]

\* \* \*

That Matson put no tags of any kind on the wire or caused to be put on the wire as it was loaded in Honolulu and, as I said this morning, loaded it indiscriminately as to which bill of lading it was under.

The Court: Do you contend that they had a legal duty in that respect?

Mr. Bunn: I think they did have a legal duty to identify it for each bill of lading. [73]

\* \* \*

Mr. Bunn: I failed to comment this morning on the fact that in the early days of this situation, that is, July 29, 30, 31, or within that week, Mr. Sweeney of Mattoon & Company, to whom had been written the letter of July 29th and the rewritten letter dated the 29th but written on the 31st, Mr. Sweeney had written a letter to the M and M Transfer Company giving them certain instructions and referring to a bill of lading attached, and Mr. Sweeney did not have any bill of lading, nor did he attach any bill of lading to that letter. Mr. Sweeney himself will testify as to the error which the use of the word "attached" in that form con-

sisted of. In other words, there is a tragedy of errors. [76]

\* \* \*

The Court: But what I am trying to get at is that you regard Dulien and the Bank as jointly and severally liable in the principal sum of \$191,000 or—— [77]

Mr. Bunn: \$197,552.

The Court: Is that right?

Mr. Bunn: Yes, sir. And that Matson and the Government—— [78]

\* \* \*

Opening Statement on Behalf of Defendant Dulien  
By Mr. Dasteel:

\* \* \*

The defendant Dulien does not deny that some of this wire was rusty and covered with dust. I think the evidence will also show that where rust is referred to that it simply means a red dust that is peculiar in Honolulu. The dust is red and very often mistaken for rust.

Furthermore, the evidence will show that this wire was oiled at Honolulu by depositions that were taken over there, and we will show that this oil was not placed on the wire for [83] the purpose of hiding the wire from rust so that it wouldn't show, but for the purpose of preserving the wire, for the benefit of the plaintiff.

Counsel stated that he is going to bring some rolls of wire into court. I assume that he is going to pick out four of probably the worst types that



he could possibly find, and at this time if I am not out of order I would like counsel to also bring in a few rolls of the good wire, so that this court may be properly informed of the fact that all of the wire was not rusty. [84]

\* \* \*

The Court: You mean that your factual position will be that this deal with Londono was concluded before the wire was on board the "White Squall" and at sea?

Mr. Dasteel: No, your Honor. Our position is that Mr. Londono purchased this wire while in transit.

The Court: While at sea?

Mr. Dasteel: Yes, while at sea. [85]

\* \* \*

The Court: Let me see now. You say the 300 tons which was rejected. I had understood from the pleadings and the opening statement of counsel that it was by mutual agreement that it would be 300 tons less.

Mr. Dasteel: Yes.

The Court: That it was not a matter of rejection by Londono.

Mr. Dasteel: Well, the original agreement, if your Honor please, called for 2700 tons.

The Court: I understand. [87]

Mr. Dasteel: And then it was reduced to 2000 tons. There were 2300 tons on board, and a conference took place between the plaintiff and the defendant—

The Court: Before the arrival of the wire.

Mr. Dasteel: Before the arrival of the wire.

The Court: And before the letter of credit was discussed.

Mr. Dasteel: Yes.

The Court: So it was a mutual agreement.

Mr. Dasteel: The mutual agreement was for 2000 tons, and the 300 tons was picked up by Dulien.

The Court: That is, 300 tons in excess of 2000 tons.

Mr. Dasteel: That is right, your Honor.

The Court: Not 300 tons of the 2000 tons?

Mr. Dasteel: No, in excess of the 2000.

The Court: Very well.

Mr. Dasteel: Now there has been some question about the mysterious bill of lading. Counsel I think from the Bank, and I think Mr. Bunn, the plaintiff's counsel, and myself interviewed Mr. Stanley who at that time was the office manager of Dulien, for the purpose of endeavoring to determine what happened to the original bill of lading and, frankly, we could not find out exactly what did happen to that bill of lading.

I have interviewed Mr. Stanley on many occasions and if he were brought here, and if it is desired by any of these [88] defendants or the plaintiff, I think we can produce Mr. Stanley and his testimony will be that he doesn't remember exactly what documents he took to the bank.

\* \* \*

Mr. Dasteel: Yes, your Honor. And we have no

objection to having him come here, but he will testify, and the evidence will show that Stanley's testimony will be, that he took some documents down to the bank, that he picked up this check and then thereafter, whether at the bank or at his office, he doesn't recall, he did sign the back of the freight bill which is marked Plaintiff's Exhibit D attached to the complaint, and on the reverse side of the freight bill: "This bill of lading [89] endorsed in full to J. B. Londono for not more than 4,000,000 pounds (which is 2000 tons), balance of shipment to be picked up by us. (Signed) Dulien Steel Products, Inc., of California, L. P. Stanley."

Counsel I believe brought to the court's attention the fact that the format of the freight bill is very similar to the bill of lading. Now whether or not Stanley had a bill of lading, we are not prepared to show. We admit that we cannot produce any evidence to show whether he did or did not have the original bill of lading. We do not consider that greatly important to the defense of the defendant Dulien.

\* \* \*

#### Opening Statement in Behalf of Defendant Bank

Mr. Diether: May it please the court, I hope that the same stipulation will apply to my remarks as applied to the remarks of Mr. Bunn, namely, whatever I state to be a fact [90] will merely be what the defendant Bank believes the evidence will show.

The Court: Surely.



Mr. Diether: And I am not stating it as a positive fact.

\* \* \*

I shall refer to the plaintiff as "Londono," to Matson Navigation Company as "Matson" and to the two Dulien Corporations as "Dulien" and to the defendant Bank as merely the "Bank." [91]

\* \* \*

The Bank does not contend it received a clean order bill of lading for 2000 tons of wire shipped from Honolulu to Los Angeles, but the Bank does contend that the plaintiff modified his instructions prior to the payment of the letter of credit by the Bank, and that modification was oral. He instructed the Bank to pay the letter of credit on receiving a clean straight bill of lading for 2300 tons and the Bank contends that it received a clean straight bill of lading for approximately 2300 tons.

Your Honor will note from Mr. Bunn's remarks that he said it was approximately 2300 tons. The tonnage or the weight on the bill of lading is in pounds and I believe it is some 52 pounds less than 2300 tons.

The Bank was requested by the plaintiff—

The Court: If I understood Mr. Bunn's statement correctly, he did not concede that the Bank had received any bill of lading.

Mr. Diether: That is correct. [94]

\* \* \*

The Court: Your position is that you did receive it?

Mr. Diether: Our position is that we did receive a straight clean bill of lading for 2300 tons pursuant to the modification of instructions which Londono gave to the Bank prior to the time that the letter of credit was paid.

The Court: Very well. [95]

\* \* \*

Mr. Diether: There is no question, I believe, but what Matson did issue in Honolulu a clean straight bill of lading for approximately 2300 tons of wire.

The Court: What do you mean by "clean"?

Mr. Diether: "Clean" is without any exceptions as to the condition of the wire. I think that a bill of lading which notes on its face, or if it were noted that the wire was rusty or had some defect, that that would not be clean, but where there are no exceptions then it is referred to as clean, and in this particular case the bill of lading that was actually issued was clean.

The Court: I understand.

Mr. Diether: This bill of lading was not found, as I understand it, until April 11, 1950, which was a week ago. Prior to that time I believe all the parties had denied that they had any knowledge of its existence. Of course ample [96] time did not exist at that time to take advantage of any of the advantages under the rules of Civil Procedure, consequently we have no knowledge of under what circumstances it was found or any circumstances as to how Matson received possession of that bill of lading. That will have to be developed during the course of the trial.

But the position of the Bank is also that regardless of whether the Bank received a bill of lading is immaterial in view of the acts and conduct of the parties in this case. [97]

It is the Bank's further contention that if the Bank did not receive a bill of lading, plaintiff received the same wire, the same quality, no better or no worse, the same quantity, no less or no more, than he would have received had the Bank received a bill of lading.

The Court: A clean order bill of lading?

Mr. Diether: Correct, your Honor.

The Court: Or a straight bill of lading?

Mr. Diether: A clean order bill of lading.

The Bank has alleged certain affirmative defenses. The [99] first is the one that the complaint fails to state a claim against the Bank upon which relief may be granted. Your Honor will recall that that was urged in the motion of the Bank to dismiss, and in that particular motion I believe the Bank only urged one of the grounds which we will urge at the time of the trial, namely, at that time we were urging that the letter of credit guarantee which Mr. Londono signed released the Bank from liability for not receiving the bill of lading as required by the letter of credit.

But there are certain other provisions in that letter of credit guarantee which we think are applicable, namely, that the Bank shall not be responsible for the character or condition of the wire, shall not be responsible for any breach of contract between the seller and the purchaser, that the Bank



shall not be responsible for the quantity of the wire, also that the Bank shall not be responsible if the instruments are not presented to the Bank at the time that the letter of credit is negotiated. Those particular features of that letter of credit guarantee we wish to urge during the course of the trial. [100]

\* \* \*

Londono by his course of conduct, which we believe he has admitted by his opening statement and by his course of conduct, has elected to accept and keep the wire under Section 1789, Subsection 1(b) of the Civil Code, that having once [102] made such election he is bound by that election and the legal consequences thereof.

The Court: Suppose he had not done so, would it not have been his duty to have done whatever he could to mitigate the damages?

Mr. Diether: I think not as against the Bank.

The Court: Against anybody? In other words, as Mr. Bunn said, somebody said, "Well, it is our money and your wire." Suppose he had refused to accept it, would it not have been his duty anyhow to go in and see what he could do?

Mr. Diether: I don't think so, not if he had refused to accept the wire.

The Court: Of course after his money was paid by the Bank and he had refused to accept the wire, what would he have done, just let it lay there and rust?

Mr. Diether: Then there would have been no question if he could have shown that the Bank had

not paid pursuant to the instructions and he rejected the wire because it did not comply with the letter of credit.

The Court: Then would not the Bank be in here saying that they paid the money and passed the title and that he did not do his duty in taking the wire and trying to sell it and thus mitigate the amount of damages?

Mr. Diether: If your Honor please, there is a very definite line of conduct for a purchaser to follow if he claims [103] that there has been a breach of contract, and that line of conduct is set forth in the Civil Code under Section 1789, and that conduct which the plaintiff has followed in this case was to accept the wire, and we claim that he accepted the wire knowing the condition of the wire, and also knew, or he ought to have known, the character of the documents upon which the Bank paid the letter of credit, and under those circumstances we think that he is estopped from claiming any damages as against the Bank. [104]

\* \* \*

April 19, 1950.

The Court: Your position is that as between Londono and the Bank the question turns on whether or not he should or should not have received a bill of lading?

Mr. Diether: That is one point, among many.

The Court: Well, that is your main point? [112]

Mr. Diether: Well, I should say that is one of the principal points.

Another one is the fact, as I mentioned to your Honor yesterday in these affirmative defenses, namely, that Mr. Londono executed this letter of credit guarantee which he, by virtue of that agreement, released the Bank from any liability for the acts which he is here complaining about.

The Court: What I am getting at is this: So far as the bill of lading is concerned, your position is that it does not make any difference whether the wire was rusty or what the condition was.

Mr. Diether: That is correct, or whether he received a shortage or not. [113]

\* \* \*

Immediately after that conference between Mr. Londono and Dulien on Friday afternoon of July 26, Mr. Londono went to the bank and informed them that he was purchasing 2000 tons of wire from Mr. Dulien. All the negotiations were in English.

The Court: That is the first time the Bank ever heard of Dulien?

Mr. Diether: The first time the Bank ever heard of Dulien. And said that he wanted to purchase a letter of credit for \$214,000. He wanted to cash in his letter of credit of \$160,000 which had been issued to him in June, and then he said he wanted to borrow the balance, which was some \$54,000, to make up the difference of \$214,000.

At that time the man he talked to was Mr. Schroeder, a vice president of the bank and in charge of the foreign department. Mr. Schroeder



informed Mr. Londono that he would have to discuss it with the senior officers to see whether such a loan would be approved. Mr. Londono at that time had a very high credit rating with the bank by reason of his [115] previous transactions with the bank.

\* \* \*

Also let me go back. On July 27th, which was Saturday morning, the application for the letter of credit was prepared. It was prepared by Mr. Schroeder, the man whom Mr. [116] Londono talked to the previous day. There was no discussion between Mr. Schroeder or Mr. Londono about any bill of lading. He didn't mention anything that he wanted a clean, straight or any kind of bill of lading. It was not mentioned. And that particular form of application which the bank uses provides a place to insert the documents to be furnished upon payment of that letter of credit.

The bank inserted in that application at its own instance the requirement that Dulien furnish a clean order bill of lading for 2000 tons of barbed wire for its own protection.

The Court: Well, it was prudence on their part, having 1000 tons or \$160,000 involved on 1000 tons shipped to Colombia.

Mr. Diether: Not only for that, but for the loan which they were then making to Mr. Londono. And it was at their instance that that requirement was inserted, and not in the instance of Mr. Londono.

The Court: Did he have any less protection for that reason?

Mr. Diether: I beg your pardon?

The Court: Would he have any less protection because the bank put it in there? [117]

\* \* \*

After that application was signed and the letter of credit guarantee, the letter of credit was issued and Mr. Londono took the letter of credit and went down and handed it to Dulien. I believe he saw Mr. Grinstein and he was then informed that the boat had already arrived the previous day, and then he went down to the dock, as Mr. Bunn has previously stated.

Upon July 29th, which was Monday morning, Dulien presented documents to the bank for payment of this letter of credit. We believe that the evidence will show that at that time Dulien presented a straight bill of lading for 2300 tons, prepaid freight bill, Dulien's invoice for 2000 tons of wire, and draft for \$214,000 and a letter of credit.

An employee of the bank by the name of Moran was on duty at that time, and he accepted those documents for checking. Moran immediately discovered that there were two discrepancies, that the documents called for 300 tons more wire than was specified in the letter of credit, namely, 2300 tons. He also observed that the bill of lading was straight rather than order.

He immediately got in touch with Mr. Londono on the telephone and informed him of these discrepancies.

Mr. Londono informed him that he had already made [118] arrangements with Mr. Dulien that he was to take 2000 tons of a 2300-ton shipment and that that phase of the transaction was perfectly satisfactory, and authorized him to accept the documents.

He also told him that he waived the order bill of lading and to accept the straight bill of lading, and he authorized the bank to go ahead and accept those documents.

He told Mr. Moran at that time that the White Squall, which was the name of the vessel on which this wire was brought to Los Angeles, had arrived on Friday afternoon, that he was very anxious to get these documents accepted, and that he wanted to get this wire reshipped to Colombia without any further delay. [119]

\* \* \*

After the documents were received a letter was prepared by the bank to Mattoon in which it is stated that they are enclosing this bill of lading and stating also that the shipment, or the bill of lading, was consigned to Dulien showing on its face that it was a straight bill of lading and not order. [120]

\* \* \*

That letter which was sent by the bank to Mattoon also specified that the shipping documents were to be delivered to the bank for delivery to Mr. Londono.

The Court: What shipping documents?



Mr. Diether: Well, for reshipment to Colombia.

The Court: Reshipment?

Mr. Diether: Yes. I beg your pardon, I should have pointed that out.

In other words, I think it was also pointed out in that letter that Mr. Londono was intending to reship this wire to Colombia and that we would give them instructions in that regard but that the shipping documents for reshipment were to be delivered to the bank for delivery to Mr. Londono.

The Court: I suppose if the evidence shows that, you will explain at the proper time why the bank sent the bill of lading over to Mattoon?

Mr. Diether: Pursuant to instructions from Mr. Londono which he gave to the bank orally.

The Court: To send the bill of lading to [121] Mattoon?

Mr. Diether: Yes, sir.

The Court: Why did Mattoon have to have the bill of lading?

Mr. Diether: They were to arrange for the reshipment to Colombia.

The Court: Why would they have to have the bill of lading?

Mr. Diether: They didn't have to have it.

The Court: They did not?

Mr. Diether: And they didn't use it. It was never used. It was never demanded by Matson and was never requested by Matson and was never at any time submitted to—I should put it this way——

The Court: You have answered the question.

You said that you sent it to him because Londono had told you to do it.

Mr. Diether: That is right.

In further answer to that I should say that we believe that there will be some evidence to the effect that Mattoon subsequently sent that bill of lading to Matson but that I understand Mattoon's testimony is that they did not deliver any documents to Matson in order to secure delivery of the wire for account of Londono.

The next day, which was Tuesday, Mr. Schroeder learned that the transaction had been consummated on July 29th, and he observed of course that the bill of lading was for 2300 [122] tons and it was a straight bill of lading to Dulien. He then called Mattoon's office——

The Court: Who was this?

Mr. Diether: Mr. Schroeder, who was the vice president of the bank, learned that the letter of credit had been paid the previous day and that the bill of lading was for 2300 tons and that it was straight and that Dulien was the consignee.

The Court: I thought you said you were going to have somebody show that somebody will testify that they saw the straight bill of lading.

Mr. Diether: We believe that Mr. Moran will so testify that it was delivered.

The Court: Not Mr. Schroeder?

Mr. Diether: Mr. Schroeder had nothing to do with the checking of these documents, but he being in charge of the office learned through his employees that this transaction had been completed.

He then called Mattoon's office to request them to secure an assignment on that bill of lading to show that Londono picked up 2000 tons.

\* \* \*

The next day was Wednesday, July 31. On that day Londono and Mr. Sweeney came to the bank and Mr. Londono at that time signed the note for \$54,535. He also pledged the 2000 tons of wire as security for the loan.

\* \* \*

At that same time Mr. Schroeder handed to Mr. Londono this letter which Mr. Bunn referred to, stating that the bank had paid the letter of credit and that the bill of lading was delivered to Mattoon & Company.

\* \* \*

Mr. Londono and Mr. Sweeney then went to the Harbor, and [124] on their way they stopped off at Dulien's office, and this document which they delivered to Dulien at that time was endorsed as Mr. Bunn has called your Honor's attention to.

The document was a freight bill. It had been in Mr. Sweeney's hands since Monday and Mr. Londono admitted seeing it, and not only that, but had seen the letter of July 29 on that day and I believe at that time, after it had been so endorsed, it was turned over to Mr. Londono and he kept it in his possession until he had some discussion, sometime the latter part of August, with one of the parties who was segregating the wire for him.



In other words, this supposed bill of lading or, I should say, the document which Londono claims the bank paid this letter of credit on was in Mr. Londono's hands from the date it was signed by Dulien, which was July 31, until sometime the latter part of August.

The Court: Before that it was in the bank's hands?

Mr. Diether: It was in the bank's hands about a part of July 29 and after July 29.

\* \* \*

In other words, we claim that that is one of the documents which was delivered to Mattoon with the letter of July [125] 29.

Now with respect to the delivery of wire to Mr. Londono. On July 30, which was Tuesday, Mattoon, prior to the receiving of the written instructions from the bank relative to the reshipment of this wire, issued orders to a trucking company to pick up wire at the Matson dock on account of Londono for reshipment to South America.

On that same date Mattoon issued an order to Matson to deliver 2825 rolls of wire to said trucking company for account of Londono. And on July 31, which was Wednesday, 740 rolls of wire were picked up by Londono, picked up by Mattoon's instructions, at the Matson dock and were taken off to the Moore-McCormack dock, and in the afternoon of that same day Mr. Londono, with Mr. Sweeney, observed that wire over on Moore-McCormack dock and they discovered at that time

that the wire was not what they thought it should be.

Mr. Londono went back to Los Angeles with Mr. Sweeney and they prepared a letter in Mr. Sweeney's office to Mr. Dulien, telling him that the wire was not as he thought it should be, and Mr. Sweeney on that same day, July 31, Wednesday afternoon, gave instructions to the trucking company to immediately pick up that 740 rolls of wire and take it back to Matson's dock, which was done the next day. So all of the wire that had been taken on the 31st was again returned to Matson's dock and they had all of it from July 31 until August 7. It [126] was all there. [127]

\* \* \*

The bank had no knowledge that there was any claim on the part of Londono that it had paid on a freight bill rather than a bill of lading until August 24th.

When Mr. Bunn and Mr. Londono came to the bank on that day, the bank immediately inquired of Dulien whether they had delivered a bill of lading to the bank, and were informed that they had so delivered a bill of lading. [130]

\* \* \*

Now, if your Honor please, I want to state very briefly the bank's contentions. We believe that the letter of credit guarantee signed by Mr. Londono at the time he purchased the letter of credit released the bank from all liability for its [132] acts which he complains of here. That not only applies

to the receipt of a bill of lading, but it also releases the bank from any defect in the wire or any failure to deliver the quantity of wire called for, or failure of bill of lading to accompany the draft at the time of the negotiations.

\* \* \*

The bank contends that Londono accepted and kept the [133] wire with full knowledge of the condition of the wire, that he knew or ought to have known the character of the documents the bank received at the time they paid the letter of credit.

\* \* \*

Londono had knowledge of the freight bill in his possession from July 31 until sometime in August. He knew or he ought to have known by that time that it was a freight bill and not a bill of lading. [134]

\* \* \*

The bank deals in documents, not in goods or merchandise. [135]

\* \* \*

We believe that the evidence will show that the bank received the bill of lading.

\* \* \*

And even if the bank did not receive a bill of lading, Londono suffered no detriment proximately resulting therefrom or which was in the contemplation of the parties at the time he purchased the letter of credit. [136]

\* \* \*



OPENING STATEMENT IN BEHALF OF  
DEFENDANT MATSON

By Mr. Aldwell: [137]

\* \* \*

The second point I would like to make is with regard to this mysterious bill of lading. Certain statements have been made by opposing counsel as to the bill of lading recently coming to light, and I thought it might be in order to make a short explanation which I think is due the court because of the fact that I personally have stated to your Honor, I believe at the pretrial conferences, that the bill of lading has never come into the possession of Matson subsequent to its issuance and, furthermore, as your Honor was undoubtedly aware, there are sworn statements in the file on the part of Matson making similar representations. So I think an explanation is due to the court.

The Court: Very well.

Mr. Aldwell: When we first came into this case, of course we attempted to get all of the information that we could with regard to the facts, and naturally one of the first things we asked for was the bill of lading. We were informed by the Matson people down here, and quite honestly on their part we believe, that they could not find it. As the case went along we again asked them if they would try and find the bill of lading. They again replied that they could not find it.

Based upon those statements—and they are in writing—we prepared the various pleadings and

affidavits and whatnot that were sworn to by the officers of Matson Navigation [138] Company. I also made those statements myself.

A week ago last Monday the original bill of lading was discovered in the Matson office at Wilmington. The circumstances under which it was discovered, briefly, were these:

In the preceding week I believe the Citizens Bank served a subpoena upon the resident vice president of Matson calling for the production of a number of documents, including the bill of lading in question. As a result of that subpoena it became necessary for the first time, we believe, for Matson to search through some files which they had not theretofore considered important. They found a number of the documents called for by the subpoena but they could not find either the bill of lading LA-29, the one that was directly involved in this case, nor could they find the bill of lading LA-22 which had been called for by the subpoena and which was the order bill of lading covering the Gonzalez & Blanco shipment.

They reported to Mr. John Morrow that they could not find either bill of lading, and Mr. Morrow told them that in view of the fact that a subpoena had been served they should do their utmost to find both bills of lading. In response to his request they put practically everybody that was employed by the Matson Company at Wilmington to work over that week end to try and find LA-22, having in mind that they never would find LA-29.

It was reported to us—I came down here; that was a [139] week ago Monday, and it was reported

to us—by telephone while I was sitting in Mr. Morrow's office that they had found both bills of lading. This was late in the afternoon of Monday

We immediately went down to Wilmington on Tuesday morning, last Tuesday, and investigated the thing thoroughly to find out the circumstances under which it had been found, which were that they had located a file containing spent order bills of lading and in there they had found LA-29, which was in the wrong file. They never previously thought of looking in that file for LA-29 because it was a straight bill of lading. So it wasn't the proper file for it.

When we returned from Wilmington on the afternoon of last Tuesday we immediately telephoned all counsel in the case and we had a personal conference with Mr. Bunn, Mr. O'Malley and Mr. Cramer—Mr. Diether of course being sick—and acquainted them with all of the details under which this bill of lading had come on to their attention. We telephoned Mr. Laven and we telephoned Mr. Dasteel.

I therefore am somewhat at a loss to explain Mr. Diether's statement that they had had no opportunity to investigate this matter because I believe that I made a complete and full statement at that time to Mr. Cramer. [140]

\* \* \*

The Court: Matson was the berth agent on both ends?

Mr. Aldwell: Matson was the berth agent on both ends; yes, your Honor.



The Court: And Castle & Cooke was their sub-agent in Hawaii?

Mr. Aldwell: Correct. That is Castle & Cooke, Ltd. [146]

\* \* \*

Our position is that this bill of lading, which is the subject of the controversy between the plaintiff and Matson, is a straight bill of lading where Dulien, as the consignor or shipper, and Dulien is also the consignee. It is a straight bill of lading, a contract between the Government, through Matson as agent, with Dulien.

The Court: If I understand your position correctly in that respect, it is this, that where it is a straight bill of lading the owner of the ship, or the berth agent, or whoever he is, is under no obligation to indicate any exceptions as to whether or not it is a clean bill of lading.

Mr. Aldwell: That is correct, your Honor, with one reservation: Where the shipper and the consignee are the same. If there is a third-party consignee the rule might be different, but we are not concerned with that here.

The Court: I understand.

Mr. Aldwell: But with the type of bill of lading that [147] was issued here, it is our position that we were under no duty to insert that because the law is perfectly clear that as between the carrier, the steamship company, and the shipper, you can always go behind the bill of lading. That is well settled. There is no question about that. So if that

is the case, there is very little point in noting exceptions on that kind of a bill of lading.

The Court: Where a person is shipping to himself?

Mr. Aldwell: That is right. It may be done, however, for this reason: If there should be a claim for damage to the cargo by that person after it is delivered at the destination point, it might be to the carrier's advantage to have some exceptions noted on the bill of lading in order to protect themselves.

The Court: I understand. [148]

\* \* \*

The Court: There apparently will be some conflict of [150] testimony between the color of the oil and the color of the red dust in Honolulu.

Mr. Aldwell: Yes, your Honor. I think there will be considerable testimony on that.

Now as I said, it is our contention that we, either acting for ourselves or as agents for the Government, were under no duty to the plaintiff. We could not foresee that Dulien would attempt to transfer this bill of lading to a purchaser from him, and it wasn't reasonable for us to foresee that. Accordingly, it is our further position that the plaintiff had no right to act on that bill of lading. The plaintiff was experienced in commercial dealings, he knew the distinction between order and straight bills of lading. The fact is shown by his instructions to the bank. He wanted a clean on board *ocen* order bill of lading endorsed in blank. He knew what he wanted, and he knew the distinction. That is why he put it in there.

Furthermore, neither the bank nor the plaintiff actually acted on this bill of lading. As your Honor will have observed, there is undoubtedly going to be some conflict in the evidence as to whether the bank actually received this bill of lading or not. It is our contention that the bank never received the bill of lading, and we believe the evidence will show that. [151]

\* \* \*

As far as the quality is concerned, of course, we allege and maintain that if there was a misdescription here on which the plaintiff has any rights against us and can recover against us, then we maintain that we were misled by the defendant Dulien who prepared the bills of lading through his agent.

The Court: If there was a misdescription Dulien did it, that is your position?

Mr. Aldwell: That is correct. And we are entitled to be indemnified. [153]

\* \* \*

## OPENING STATEMENT IN BEHALF OF UNITED STATES

Mr. Laven: The Government, of course, adopts the position taken by Matson relative to the shipment, and also in regard to the indemnity which they claim against Dulien by reason of their being the owner of the ship.

The Government has no quarrel with Mr. Bunn's original statement that the order bill of lading is



highly negotiable and that a straight bill of lading is not negotiable and of no importance. [155]

\* \* \*

Nor did he in any way rely upon either the freight bill, because the freight bill did not come into his possession until after it had been spent and delivered to Matson on July 29th. The evidence will show that he never saw the bill of lading at any time, that he saw the freight bill long after the cargo had reached the dock and was being unloaded and, under the bill of lading, that as soon as the cargo is [156] discharged there is no further liability on behalf of the carrier.

\* \* \*

That Mr. Londono did not have any greater rights by being an assignee of Dulien—the first time that that assignment was made was, I believe, on July 31, of the freight bill—so that Londono does not stand in any better position than Dulien, the shipper, and that Londono is subject to all of the equities as between the Government, the carrier and Dulien.

That the only claim here is that the carrier and its agent failed to indicate on the bill of lading that the cargo was rusty. We submit that under a straight bill of lading, being from Dulien to Dulien, being the same identical party, that there was no duty under the law, because under the bill of lading and the Carriage of Goods by Sea Act, the carrier has a right to rely upon the description and the weight given [157] to it by the shipper, and in the

event that that is not correct, has a right to be indemnified by the shipper, as was stated by Mr. Aldwell.

There is no claim here that the wire became rusty in transit. We submit that the purpose of the exceptions to be noted, as provided for in the bill of lading and in the Carriage of Goods by Sea Act, only applies to an order bill of lading and does not apply to a straight bill of lading, and its purpose is to protect the carrier from any claims that might be made by either the shipper or someone who is an innocent purchaser for value, such as a bona fide holder before any notice. [158]

\* \* \*

April 19, 1950—2:00 P.M.

The Court: Mr. Bunn.

Mr. Bunn: I think it would be well at this time to have sworn the gentleman to interpret if and when his services are needed.

The Court: Very well.

Mr. Bunn: Mr. Blanco, will you come forward, please?

The Court: What language?

Mr. Bunn: Spanish, sir.

(At this point Harry C. Blanco was duly sworn to interpret from English into Spanish and Spanish into English.)

Mr. Dasteel: Your Honor please, may I inquire if the interpreter, Mr. Blanco, is the Blanco of the firm of Gonzalez & Blanco, or whether he has any connection with them?

The Interpreter: No, sir, I have not.

Mr. Dasteel: All right.

Mr. Bunn: Are you even acquainted with Mr. Blanco?

The Interpreter: No, sir. I know the firm, that it is here in Los Angeles, but I never had any dealings with them.

The Court: Does anyone want to examine the interpreter on voir dire?

Mr. Laven: No, sir. [162]

Mr. Aldwell: No.

The Court: Apparently not. You all thereby waive any disqualification.

\* \* \*

### J. B. LONDONO

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows: [163]

\* \* \*

### Direct Examination

By Mr. Bunn:

\* \* \*

The Court: No. Let me ask Mr. Londono some questions.

Mr. Londono, we just swore an interpreter here. Your language is Spanish?

The Witness: Yes, sir.

The Court: That is, it is not the Mexican Spanish, it is the South American Spanish?

The Witness: Colombian Spanish.

The Court: Colombian Spanish? [164]

The Witness: Yes, sir.



(Testimony of J. B. Londono.)

The Court: You do speak English?

The Witness: I speak English.

The Court: And you understand it?

The Witness: Sometimes.

The Court: And sometimes you do not understand it?

The Witness: Yes.

The Court: In other words, you do not feel that you are fluent in the language?

The Witness: Yes.

The Court: And that you may need the aid of an interpreter?

The Witness: Yes.

The Court: You will understand, therefore, that at any time in these proceedings when a question is asked of you by counsel, if you do not understand it, you may ask to have the interpreter interpret for you rather than have every question asked of him. Do you understand the situation now?

The Witness: Yes.

The Court: In other words, anytime that it gets over your head in English you just so indicate.

The Witness: Yes. [165]

\* \* \*

Q. (By Mr. Bunn): Will you give your full name?      A. Jose Bernardo Londono.

Mr. Hubert Morrow: The witness will have to speak at least twice as loud as he is. [167]

The Court: Yes, I think so. He was just spelling his name. It is Joseph Bernardo Londono.

Now you talk to him and talk loud enough so that he can hear you.

(Testimony of J. B. Londono.)

The Witness: Yes, your Honor.

Q. (By Mr. Bunn): Where do you reside?  
Where is your home?

A. Medellin, Colombia, South America.

Q. Of what country are you a citizen?

A. Colombia, South America.

Q. Were you born there? A. Yes.

Q. When? How old are you?

A. I am 38 years old. I was born in 1912.

Q. What is your business, Mr. Londono?

A. I am an importer.

Q. How long have you been so engaged in that business? A. From 1942.

Q. What business were you in before 1942?

A. I was in the transportation business in Colombia. I was acting for custom brokers.

Q. How old were you when you first began to do business involving shipping documents?

A. I was 28 years old.

Q. In the year 1946, what was your [168] business? A. Importer.

Q. For the entire year? A. Yes.

Q. Full year? A. Yes.

Q. Did you, before the year 1946, do any importing business with persons in the United States of America?

A. I used to import all my goods from the United States of America into Colombia.

Q. Louder, please.

A. I used to do all my business with the United

(Testimony of J. B. Londono.)

States of America, import business, from 1942 to now.

Mr. Diether: I didn't hear him.

The Court: He said he did all his business from 1942 up to now with the United States of America.

Q. (By Mr. Bunn): Do you mean that you did not do any importing business with persons in other countries than the United States?

A. With very few exceptions.

Q. Mr. Londono, in the beginning of the year 1946, did you know the difference between an order bill of lading and a straight bill of lading?

A. Yes.

The Court: By the way, do you read the English language?

The Witness: A little. [169]

The Court: Did you read it in 1946?

The Witness: Yes, your Honor.

Q. (By Mr. Bunn): Mr. Londono, in the beginning of the year 1946, what was your understanding of the difference or the differences between a straight bill of lading and an order bill of lading?

\* \* \*

The Witness: I understood that the difference was that a straight bill of lading is not a negotiable document and an order bill of lading is a negotiable document; that the order bill of lading gave the title of the merchandise.

Mr. Diether: Whata was that last?

The Court: That the order bill of lading gave the title to the merchandise.



(Testimony of J. B. Londono.)

The Witness: And permit to sell the merchandise by the [170] documents. In other words, it is not necessary to have physical possession of the goods, just the documents.

The Court: That is the order bill of lading?

The Witness: Order bill of lading.

Q. (By Mr. Bunn): Had you before the beginning of the year 1946, dealt in order bills of lading in your own country? A. Yes.

The Court: And straight?

The Witness: On foreign business in Colombia, we always use order bill of lading because we make it on sight through the banks, but in business between two points of Colombia we sometimes use straight bill of lading.

The Court: So that you were familiar with a straight bill of lading?

The Witness: Yes, your Honor. [171]

\* \* \*

Q. (By Mr. Bunn): Mr. Londono, in the transaction of the importing business and the handling of order bills of lading in Colombia in 1946, generally speaking, through whose hands would order bills of lading pass in a transaction?

The Court: On shipments from the United States?

Mr. Bunn: On shipments from the United States.

Mr. Dasteel: Your Honor please, same objection.

(Testimony of J. B. Londono.)

The Witness: Through the banks and through the brokers.

Mr. Diether: Just a moment.

I can't see, for the life of me, what the materiality is in connection with bills of lading handled in Colombia, what that may have to do with this case. They may have different rules and regulations entirely than we have here.

Mr. Dasteel: I join in that objection.

The Court: In view of the opening statements made by the bank and by Mr. Dasteel and Mr. Bunn, the objection is overruled. I will treat them as a motion to strike, but the motion to strike is denied because he had answered the question.

Q. (By Mr. Bunn): On a transaction involving a shipment of merchandise from the United States to you, as an importer in Colombia, on an order bill of lading how would the transaction be completed for your office, through a bank or [174] not?

Mr. Diether: That is objected to as incompetent, irrelevant and immaterial, and has no bearing on any of the issues involved in the case against the bank, how they would handle an order bill of lading in Colombia. We are only concerned here with the manner in which this transaction was handled in this country.

Mr. Dasteel: I join in that objection, your Honor.

Mr. Bunn: I will withdraw the question and satisfy counsel by asking another.

(Testimony of J. B. Londono.)

The Witness: It is practically an international practice. Shipping documents is the same here as in London, Hong Kong or any place else.

The Court: It is an international business?

The Witness: Yes, sir.

The Court: It is handled the same here as in Colombia or Hong Kong?

The Witness: Yes. The goods from the United States or Colombia and the documents are the same here in the United States. They are international documents.

Q. (By Mr. Bunn): Mr. Londono, did you in the year 1945, have any business—withdraw that.

Were you in the United States of America at any time in the year 1945? A. No, sir. [175]

Q. Were you here in the first six months of 1946?

A. Yes, sir.

Q. Did you in that period of time, the first six months of 1946, transact any business with the Citizens National Bank of Los Angeles?

A. Yes, sir.

Q. And about when was that?

A. It was in February, 1946. I think it was in March. It was in June, maybe July.

Q. You mean in February and March and June?

A. Yes. We had several business with the Citizens Bank.

Mr. Diether: I couldn't hear the answer.

The Court: We had several business with the Citizens Bank.



(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): When did you first make the acquaintance of Mr. Schroeder of the Citizens National Bank?      A. The first time I saw him?

Q. Yes.

A. It was in February or March, 1946.

Q. Did Mr. Schroeder at that time handle any business transaction for you? Just answer yes or no, please.      A. Yes.

Q. With what other person or persons in the foreign [176] department of the Citizens National Bank were you acquainted before July 1, 1946?

A. Mr. Powers.

Q. Any other?      A. Mr. Moran.

Q. Before July 1, 1946?      A. I think so.

Q. Had you, before July 1, 1946, ever established credit with the Citizens Bank?      A. Yes.

Q. Had you put transactions through the foreign department of the Citizens Bank within that period?

A. Yes, sir.

Q. Had any one of those transactions been handled by any other person with you besides Mr. Schroeder?      A. Mr. Powers.

Q. Now bringing us down to the early part of July, 1946—by the way, when did you arrive in Los Angeles the last time before July 11, 1946?

A. It was about May 6, 1946.

Q. Were you here continuously?      A. Yes.

Q. Thereafter?      A. Yes, until November.

Q. Now did you have a conversation with Mr. Schroeder [177] of the Citizens Bank in the month of June about barbed wire?

(Testimony of J. B. Londono.)

Mr. Diether: You are referring to 1946?

Mr. Bunn: Yes. All my questions are as to 1946 now unless I otherwise say.

The Witness: I don't remember if it was in June. I remember in June or July, 1946, we had several conversations about barbed wire.

Q. (By Mr. Bunn): Do you remember the first one specifically?

A. I don't know the date. It was in June or July, referring to one order for Colombia for barbed wire which credit came from the Citizens National Bank concerning a thousand tons of wire.

\* \* \*

Q. Did you establish any credit at the Citizens Bank upon that occasion?

A. It was established in my favor for that bank in Colombia.

Q. Did you converse with Mr. Schroeder about that?

A. Yes, because I had difficulties to obtain the barbed wire.

The Court: What did you do, have a letter of credit from your bank in Colombia? [178]

The Witness: Yes, your Honor.

The Court: How much money?

The Witness: \$160,000.

The Court: And you took it to the Citizens Bank?

The Witness: Yes.

The Court: And dealt with Mr. Schroeder?

The Witness: Yes, sir.

(Testimony of J. B. Londono.)

The Court: Is that letter of credit here?

Mr. Diether: That is not quite correct, your Honor. The bank in Colombia, I think, requested the Citizens Bank to issue a letter of credit. It is a Citizens Bank's letter of credit rather than a Colombia bank.

The Witness: Yes.

The Court: In other words, the Colombia bank told the Citizens Bank that he was good for \$160,000?

Mr. Diether: That is correct.

Mr. Bunn: Then I won't have to prove that.

Q. Now did you after that——

The Court: Is there a document in connection with that mentioned barbed wire?

Mr. Bunn: There is a document. May I have No. 1, please?

(The document referred to was passed to counsel.)

Mr. Bunn: Gentlemen, I have in hand a photostatic copy of the item No. 1 that you all have on your list. [179]

Mr. Dasteel: If your Honor please, I would like to get squared away a little here.

Now the matters which are being referred to now and the interrogatories placed to the witness are long before the defendant Dulien had any connection with the plaintiff here, no transaction at all, and ordinarily, of course, if we were the only defendant we would strenuously object to that. But



(Testimony of J. B. Londono.)

I realize that it does affect the relationship with the bank. I would like to go on record as objecting to any testimony regarding any activity of any kind whatsoever that took place prior to the time that there was any meeting of the minds or any activity between the defendant Dulien and the plaintiff Londono.

The Court: Counsel, I can foresee that throughout the case there might be a situation arising like that, but there are four different defendants here, some evidence might be applicable to some, or admissible to some, and some might not be as to others. And you have no jury here—not that I, by virtue of that fact, have any greater intellectual powers than a jury has—but sometime along the road you have to take a chance as to whether or not the man who holds the position can discharge the duty, and this is one of them.

Mr. Dasteel: At least I have called it to the court's attention.

The Court: To apply the evidence that is [180] directed against the persons to which it is admissible. I think in that way considerable time might be saved. Otherwise the record will be full of objections.

Mr. Dasteel: I am perfectly willing to cooperate. I just wanted to go on record to that effect.

The Court: Very well. The objection is overruled.

Mr. Hubert Morrow: I think if we had an understanding that we need not object to evidence at that

(Testimony of J. B. Londono.)

stage when it is introduced, but that we reserve the right to move to strike it, or take advantage of the fact that at any proper time that it does not apply to any particular defendant, we may make such a motion.

The Court: I think perhaps you can save the record in that respect and everybody's rights.

Mr. Hubert Morrow: Everybody will be protected and we wouldn't need to interrupt every time.

The Court: In other words, any objection which might be made on the ground that it is incompetent, irrelevant and immaterial with relation to the particular defendant will be reserved as the basis of a motion to strike at the appropriate time.

Mr. Hubert Morrow: Yes, your Honor.

Mr. Dasteel: That applies to all defendants?

The Court: That applies to all defendants. [181]

\* \* \*

Mr. Bunn: I am about to show the witness the document dated July 2, 1946. [182]

The Court: Exhibit 1 for identification?

Mr. Bunn: Yes, your Honor.

Q. Mr. Londono, I ask you if you received the original of that document, this being a photostat?

A. Yes, I received it. [183]

\* \* \*

Mr. Bunn: But the document which I have handed the witness is the bank's advice to the wit-

(Testimony of J. B. Londono.)

ness that they have received the instructions from South America.

\* \* \*

The Court: We will make it a part of 1. That will be marked 1-A for identification.

(The document referred to was marked plaintiff's Exhibit 1-A for identification.)

\* \* \*

The Court: The plaintiff's exhibits will take a number and the defendants will each take letters, M for Matson, D for Dulien, et cetera.

Q. (By Mr. Bunn): That document is entitled "Confirmed [184] Irrevocable Straight Credit." I ask you if that is the letter of credit directed to you by the Citizens Bank? A. Yes, it is.

Mr. Bunn: I offer those as plaintiff's Exhibits 1 and 1-A. [185]

\* \* \*

The Court: Very well. They are admitted in evidence, both of them.

(The documents referred to were received in evidence and marked Plaintiff's Exhibits 1 and 1-A.)

\* \* \*

The Court: Just a moment. When did you get that paper?

The Witness: The first week of July, 1946.

Q. (By Mr. Bunn): Did you have any conversation with Mr. Schroeder in June or July, 1946, about your going to New Orleans?



(Testimony of J. B. Londono.)

A. Yes, sir. I asked Mr.—

Q. First, where did the conversation take place?

A. At Mr. Schroeder's office at the bank.

\* \* \*

Q. What was that conversation?

A. I told Mr. Schroeder that in order to complete this order for a thousand tons of barbed wire for Colombia, I had to go to New Orleans to inspect the wire to see the wire that I bought from people here, which name is International Factors, and Mr. Schroeder got me a letter, [190] recommendation letter, for one bank in New Orleans stipulating that I had a letter of credit for \$160,000. In other words, Mr. Schroeder commanded the bank in New Orleans to help me in my transaction about barbed wire.

Q. Did you go to New Orleans?

A. No, because a few days later International Factors notified me that they can't complete the order because they had not the barbed wire.

\* \* \*

Q. Now when did you first have any dealings with Dulien Steel Products of California, Inc., or Dulien Steel Products, Inc.? In America we say "Inc." for incorporated, abbreviated.

A. Yes, I understand.

Q. But I shall hereafter refer to any or all of them as Dulien. [191]

A. On July 11 I was notified that Dulien Steel Products, Inc., or Dulien Steel Products, Inc., of

(Testimony of J. B. Londono.)

California, had some barbed wire for sale. Then I was at Dulien's office in the afternoon of July 11, 1946.

Q. With whom?

A. With Mr. Arturo Rendon, of Colombia.

Q. Who else was present then and there? What other persons were present then and there at Dulien's office on the afternoon of July 11, 1946?

A. One Mr. Stinson, one Mr. Cuthill—they are supposed to be agents, sales agents, for Dulien.

The Court: Were they the ones who took you there?

The Witness: Yes, sir.

Then at Dulien's office I saw Mr. Grinstein, who confirmed to me that they had some barbed wire for sale, and I inquired about the quality and the quantity, the location, and Mr. Grinstein told me that the barbed wire consisted of one lot of 2700 tons, half galvanized, half black, coming from Honolulu, Hawaii.

I inquired about the quality and the samples. Mr. Grinstein took me out of the office in an open yard and show me a lot, small lot, maybe a hundred coils of barbed wire, black, covered with grease, and told me that the barbed wire, the black barbed wire, coming from Honolulu, will be equal to that barbed wire he showed me. [192]

Mr. Dasteel: If your Honor please, I move to strike the testimony of the witness on the grounds that there is being attempted to be offered by plaintiff parol testimony to change the terms of a written

(Testimony of J. B. Londono.)

contract. I refer your Honor to the case of United Iron Works v. Outer Harbor Dock and Wharf Company. It is Cal. 168, page 81. I will just read the syllabus here.

“Parol Evidence of Warranty in Case of Written Contract.

“Where the parties have reduced to writing what appears to be a complete and certain agreement, importing a legal obligation, it will, in the absence of fraud, accident, or mistake, be conclusively presumed that the writing contains the whole of the agreement between the parties, and parol evidence of prior, contemporaneous or subsequent conversations, representations, or statements will not be received for the purpose of adding to or varying the written instrument. If, therefore, such a writing exists between the parties, and it contains no warranty at all, no warranty can be added by parol; if it contains a warranty of some kind or to some extent, parol evidence will not be admitted to extend, enlarge, or modify that which the writing specifies.” [193]

And the court in this case upheld the objection that the testimony should not have been admitted, that it was inadmissible.

I have another case more up to date, in Cal. App. 90, Second Series. I can go into it at greater length, but I presume that I have offered the court enough law to show that any evidence regarding the condi-



(Testimony of J. B. Londono.)

tion, statements made prior to the time this transaction was entered into, at the time or afterwards, is inadmissible due to the reasons I have just set forth to the court.

Mr. Diether: If the court please, I would like to object to it and ask that it be stricken on the grounds that it is not responsive to the question. The witness was merely volunteering.

I also want to join in Mr. Dasteel's objection. I think that the rule is well settled in California that all preliminary negotiations prior to the entering into a contract are merged in the contract itself and consequently none of the preliminary negotiations or representations may be shown in the absence of fraud, and no fraud is alleged in this case. I think that the court should admonish the witness not to volunteer, but to merely answer the questions as they are propounded to him by counsel.

The Court: Your objection on the ground that the answer is not responsive is overruled. [194]

Do you wish to be heard on the other, Mr. Bunn?

Mr. Bunn: Your Honor, please, my understanding is that when representations are made constituting inducement to the execution of a contract, the inducement thereby becomes a part of the contract, and we have set out here fully——

The Court: The objection is overruled. The motion to strike is denied.

Mr. Diether: May it be understood that if any further conversation is elicited from this witness with respect to preliminary negotiations between

(Testimony of J. B. Londono.)

Mr. Dulien and Mr. Londono that they may be subject to the same objection?

Mr. Dasteel: And I would like to add to that, any negotiations or conversations regarding the merchandise purchased on this contract at the time or afterwards, that we object to it.

The Court: You may be deemed to have your objections to each and every question which goes to elicit such information without repeating them, and the ruling will be the same.

Q. (By Mr. Bunn): Now, Mr. Londono, on that occasion at Dulien's office, will you proceed with the balance, if any, of any conversation which you had then with Mr. Grinstein?

A. Yes. After——

Mr. Dasteel: Was this on July 11? [195]

Mr. Bunn: This was on July 11.

The Witness: On July 11, after I saw the black wire, I required some samples.

The Court: What was the condition of the black wire?

The Witness: It looked good, good wire.

The Court: Was it rusty?

The Witness: No, good wire, covered with grease, not rusty.

And Mr. Grinstein offered me to give me some samples of that wire, and I inquired about the quality of galvanized wire.

Q. (By Mr. Bunn): Did he show you any galvanized wire?

A. Yes, he showed me several coils, he had small

(Testimony of J. B. Londono.)

coils of galvanized wire, and he told me that the quality and the gauge would be equal to the wire coming from Honolulu. As galvanized wire is sold as a standard thing, I don't require samples.

Q. I beg your pardon?

The Court: He said, as galvanized wire is sold standard, I did not require samples.

Mr. Bunn: Thank you.

The Witness: After that conversation, after I saw the wire, I agree with Dulien to buy from him 2,700 tons of barbed wire. [196]

The Court: Did he give you samples?

The Witness: The next day. I agreed to buy 2,700 tons of barbed wire, half galvanized, half black, and it was late on the 11th, and I offered to come back the next day to complete the transaction. That was all our conversation in the 11th of July of 1946.

Q. (By Mr. Bunn): Was anything said about what you were going to do with the barbed wire?

A. We mentioned that the barbed wire was destined to go to Colombia, South America, and I told Mr. Grinstein, I am from Colombia and the reason I buy the wire is to ship the wire to Colombia.

Q. Is that all the conversation as you remember it?

A. In essence, yes.

Q. Now, what did you do then? Come back to Los Angeles, to downtown?

A. Yes, I came to Los Angeles, downtown, and in the morning of the 12th—



(Testimony of J. B. Londono.)

Q. Let me get to that. Did you have any contact with Mr. Grinstein on July 12?

A. Yes, in the morning of July 12 I again was at Dulien's office.

Q. With whom?

A. Mr. Arturo Rendon. [197]

Q. And with the other two gentlemen you named?

A. I don't remember—yes, they were present, because they were there trying to get a commission from Dulien for the sale of the wire.

The Court: You mean Mr. Stinson and Mr. Cuthill?

The Witness: Yes, sir.

Q. (By Mr. Bunn): What time was that?

A. It was around 10:00 o'clock.

Q. At Dulien's office?

A. Between 10:00 and 11:00 o'clock.

Q. At Dulien's office? A. Yes, sir.

Q. Who was there from Dulien's establishment then, what person?

A. (Through Interpreter): I saw Mr. Grinstein and Mr. Stanley the first time, and a few minutes later Mr. Dulien himself come to the office.

Q. Now will you first tell us what conversation, if any, took place between you and Mr. Grinstein before Mr. Dulien came in to the group?

A. I required the samples, the cut samples, from Mr. Grinstein, and he got me the samples at that time, before they say that they will write the contract, and suggest for me to wait for Mr. Dulien,

(Testimony of J. B. Londono.)

who was coming from his house [198] to the office. Then we waited until Mr. Dulien come to the office.

Q. Did you see the contract before Mr. Dulien came?

The Court: Contract?

Mr. Bunn: He said they told him they would prepare a contract. That is his last answer.

The Witness: Yes, but in order to sign the contract I remember we waited for Mr. Dulien.

The Court: Did he give you the samples?

The Witness: Yes, Mr. Grinstein did.

The Court: Where are they now?

The Witness: I have the samples.

The Court: You have them?

The Witness: Yes.

The Court: Here?

The Witness: Yes, sir.

The Court: Very well.

The Witness: Would you like to see the samples?

Mr. Bunn: Just a moment. We will come to that. Gentlemen, I am about to show the witness the signed duplicate original of my document No. 2.

The Court: No. 2 for identification, which is Exhibit A in your complaint?

Mr. Bunn: Yes, your Honor, dated July 12, 1946.

Q. Mr. Londono, did you ever see that document before? [199] A. Yes.

Q. When first and where?

(Testimony of J. B. Londono.)

A. At Dulien's office, July 12, 1946, about 11:00 o'clock.

Q. Did you see that document before or after you were given samples of wire, cuttings?

A. I saw the contract after I got the samples.

Q. Now, do you now have in your possession the cuttings of wire, the samples, that were given you?

A. Yes, I have.

Mr. Bunn: Gentlemen, shall I pass these things around before I offer them?

Mr. Hubert Morrow: Have you offered No. 2?

Mr. Bunn: I haven't offered it yet.

The Court: It is 2 for identification.

Q. (By Mr. Bunn): Are those the samples there?

A. (Examining samples): Yes.

Q. How many are there?

A. Seven pieces of wire.

Q. Who gave them to you?

A. Mr. Grinstein of Dulien's office.

Q. Mr. Londono, where have they been since that time?

A. I had these samples with me from July 11, 1946, [200] until I came to you one day in August, 1946.

The Court: And you have had them ever since?

Mr. Bunn: I have, your Honor, since they were delivered to me. I have had them in my office. They were never taken out of my office.

Q. Mr. Londono, were they while in your possession treated with anything at all

A. No.



(Testimony of J. B. Londono.)

Q. Did you deliver them to me exactly as they were delivered to you?

A. Yes, sir. They are in the same paper.

Q. What kind of wire are those cuttings, Mr. Londono?

A. It is good wire, Mr. Bunn.

Q. Black or galvanized?

A. Black.

The Court: Are those 12 or 12.5 guage, 2 strand?

The Witness: Yes, sir.

The Court: And 4 point barbs?

The Witness: Yes, sir, they are.

The Court: Spaced at 3 and 4 inches apart?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Do they now appear to you to be in the exact condition except for being nearly four years older than they were when you got them?

A. They look equal.

Mr. Diether: I didn't hear that.

The Court: It looks equal.

The Witness: Yes, sir.

Mr. Bunn: The plaintiff offers these cuttings of barbed wire as plaintiff's exhibit——

The Court: No. 36. Exhibit 36 will be the number.

Mr. Diether: Of the barbed wire?

The Court: Of the barbed wire.

Mr. Diether: May I object before it is received in evidence?

The Court: Yes, surely.

Mr. Diether: Your Honor please, in support of the same objection that I made previously, namely,

(Testimony of J. B. Londono.)

that all the preliminary negotiations relative to the purchase of this wire were merged in the contract in view of the fact that in the written contract no reference is made to any samples, I think that they are therefore incompetent, irrelevant and immaterial and not involved in any issue in connection with the cause of action against the bank.

Mr. Dasteel: Your Honor, was Plaintiff's Exhibit 2 simply offered for identification or offered in evidence? That is the contract.

The Court: He has not yet offered it in evidence. It is marked for identification only. [202]

The objection is overruled. No. 36 is received in evidence.

(The samples of barbed wire referred to were received in evidence and marked as Plaintiff's Exhibit No. 36.)

Q. (By Mr. Bunn): Now, Mr. Londono, after those cuttings of wire were handed you by Mr. Grinstein, what conversation, if any, was had between you and him and who, if any other person, was present?

A. When I got the samples of the wire and the contract it was ready to sign, Mr. Dulien he was in the office and I asked Mr. Dulien—Mr. Grinstein told me the day before that Mr. Dulien saw the wire in Honolulu—then I asked Mr. Dulien in person, "How is the quality of the wire?" and he told me that the wire is good, he saw the wire in Hono-

(Testimony of J. B. Londono.)

lulu, and he would like to buy an additional 50,000 tons of the same wire.

At the same time Mr. Grinstein told me that they bought the wire from the government at the price of \$28 per ton in Honolulu. I believe that is all Mr. Dulien say to me, and I signed the contract.

The Court: And Mr. Grinstein?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you, yourself, have any actual part in the [203] preparation of the contract? A. I signed my name.

Mr. Bunn: Now, if I may have that document.

(The document referred to was passed to counsel.)

Q. (By Mr. Bunn): Now, I show you this document marked No. 2 for identification and ask you, is that the contract you signed?

A. Yes, it is. That is my signature here.

Q. Your signature is one of those illegible signatures, isn't it?

A. Yes, but I know it is mine.

Q. Did you see the affixing of the signature, E. S. Grinstein, to that? A. Yes, I saw it.

Q. You saw him sign it? A. Yes, sir.

The Court: Was Mr. Dulien present when he signed it?

The Witness: Yes, he was present.

On the reverse side of the original of this order there is a stipulation about the commission Dulien paid to the agents.



(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): This is the one that was delivered to you? A. Yes.

The Court: Did you sign the reverse side, too? [204]

The Witness: I don't think so, your Honor.

Mr. Bunn: May I see the original, Mr. Dasteel, since it has been brought into the testimony?

(The document referred to was passed to counsel.)

The Court: The record will show that Mr. Dasteel has handed Mr. Bunn a document.

Mr. Bunn: Yes. Have you seen this? I haven't seen it until today.

(Counsel examining document.)

Mr. Dasteel: Will you draw attention to the writing on the back, which has nothing to do with the transaction or the case or the issues between the plaintiff and the defendant here or any of them?

I might say, for the benefit of the court, while counsel is reading that, that the endorsement on the back there is simply an agreement to pay to two people a commission for the finding of the purchaser.

The Witness: Yes, I saw them sign it. I have memory of the fact at this time.

\* \* \*

Q. (By Mr. Bunn): Now, Mr. Londono, the document [205] marked No. 2—that is the sale

(Testimony of J. B. Londono.)

order—was that delivered to you? A. Yes.

Q. On the occasion of July 12? A. Yes.

Q. Now, did you at that same conference see the other duplicate original, that is, this one?

The Court: Mark that 2-A for identification.

(The document referred to was marked Plaintiff's Exhibit No. 2-A for identification.)

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you see, at that time, anything being written or that had been written on the back of 2-A? A. Yes.

Q. Was any or all of what now appears on the back of 2-A put on there in your presence?

A. Yes, sir. It was signed in my presence.

The Court: Any or all? Was all of it on there?

Q. (By Mr. Bunn): What portion of it was put on there in your presence?

A. I was present when it was signed, and I remember it was the full printing here.

Q. What about this pencil notation here? [206]

A. No, just the signature and the printed part.

Q. The typing, you mean? A. Yes.

Q. Was Mr. Grinstein's signature put on there in your presence? A. Yes, it was.

Q. And the signatures of Cuthill and Stinson?

A. Yes, sir.

Q. But you were not involved in that transaction, were you? A. No.

Mr. Bunn: We offer Exhibits 2 and 2-A as Plaintiff's exhibits.

(Testimony of J. B. Londono.)

Mr. Dasteel: If your Honor please, now that the contracts have been offered in evidence, I wish to renew my objections to them on the grounds, and to strike all testimony that has been offered by this witness prior to the offering of these documents, on the grounds that it was offered for the purpose of changing the terms of a written document. I have a further authority here, the case of *El Zarape, etc., Factory v. Plant Food Corp.*, in 90 C. A. (2d)—and this is in February, 1949; a recent case—and I will just read part of the syllabus.

Mr. Laven: What is the page number?

Mr. Dasteel: Page 336. [207]

“Since the parol evidence rule is not a rule of evidence but of substantive law, if evidence of conversations and negotiations preceding or contemporaneous with the execution of a writing is admitted, such evidence has no legal force and must be ignored.”

Mr. Bunn: We are not attempting to vary the terms of the contract, but to show the inducement by which the contract was entered into.

The Court: The motion to strike is denied.

Mr. Diether: May I also object on the same ground that Mr. Dasteel has just stated. My previous objection may have been premature in that the contract had not then been offered in evidence.

I would like to call your Honor's attention to a further case which holds that whatever the preliminary proposals may have been they were, of



(Testimony of J. B. Londono.)

course, merged in the written agreement and could not be given effect to add to, alter or modify its plain terms.

That is the case of *Brown v. Fletcher Aviation Corp.*, 67 C. A. (2d) at 855, at page 860. Petition for hearing in the Supreme Court was denied.

We believe that all these preliminary conferences and negotiations between Mr. Londono and Mr. Dulien were merged in this written contract, which has been offered in evidence, [208] and therefore cannot be used to vary the terms of that agreement.

I move, at this time, to strike all of the testimony of this witness heretofore elicited which goes to that preliminary proposal other than those that are incorporated in the contract itself.

The Court: The motion to strike is denied on the grounds suggested by counsel, and in addition to that, the document is not plain as to its terms.

Mr. Dasteel: If your Honor please, I wish to crave the indulgence of the court, and I appreciate the court's patience in this matter, but this is a very important matter to the defendant Dulien, this particular matter that we have objected to, and I wonder if the court would indulge me a little further by giving some indication for its ruling and in not granting the motion to strike the evidence.

The Court: I just did. I said, in addition to the grounds assigned by Mr. Bunn, the document is not plain as to its terms concerning the condition of the wire.

Mr. Bunn: Shall I proceed?

(Testimony of J. B. Londono.)

The Court: Yes.

Mr. Bunn: Are you through?

The Court: It is not plain because it is not plain what is meant by "as purchased by seller from Interior Department." When was it purchased, 40 years before? Five years [209] before? Ten minutes before? How are you going to explain that unless you have it by oral conversations or evidence?

Mr. Dasteel: That was the duty of the buyer to ascertain at the time. The buyer has a duty——

The Court: And, moreover, the phrase, "as purchased by seller from Interior Department," I realize what your contention is, you set them up in documents which have previously been filed, but I do not know—I will not say that I do not know—I will say this, that the document is not clear as to whether or not the condition of the wire as purchased is the same as at the time of the purchase, at the present time, and so on.

Mr. Dasteel: I was about to say that that would be attempting to read something into the contract that isn't there, your Honor.

The Court: No. I am just saying that an additional ground is that it is not plain what is meant by the document.

Proceed.

Q. (By Mr. Bunn): Mr. Londono, you said, I believe, that certain coils or rolls of galvanized wire were shown you at Dulien's yard. A. Yes.

Q. Was that on the 11th or the 12th?

A. On the 11th. [210]

(Testimony of J. B. Londono.)

Q. What was the apparent quality of that galvanized wire that they then showed you?

A. Brand new wire, it looked white, galvanized white.

Mr. Dasteel: Just a minute, if your Honor please. The witness has already offered in evidence the samples which he claims were samples of the wire.

Mr. Bunn: Of black wire.

Mr. Dasteel: Of black wire, and he said that he didn't see any galvanized wire before.

The Court: No, he said he saw several coils of galvanized wire.

Mr. Dasteel: He said he didn't get any samples of it.

The Court: He said he did not get any samples of it. His question is, however, what did the wire look like that he saw, and he has just answered, it looked like brand new wire, white galvanized wire.

Q. (By Mr. Bunn): Mr. Londono, in the conversation with Mr. Grinstein on the 11th, was there anything said about the method by which you would pay?

Mr. Dasteel: I object to that as being incorporated in the contract itself, specifying the terms of payment.

The Court: Overruled.

Q. (By Mr. Bunn): You may answer. [211]

A. Yes. I offered Mr. Grinstein to open the next day one credit for \$160,000 money that I am supposed to have at the bank with letter coming from



(Testimony of J. B. Londono.)

Colombia, or in my hands from Colombia, and additional credit for \$128,000 a few days later.

Q. Was there any conversation on that subject with Mr. Dulien on the 12th?

Mr. Dasteel: May I ask, are you asking if this statement he has just made was made on the 12th?

Mr. Bunn: No, he said that was made on the 11th.

Q. Was any conversation on that subject had on the 12th when Mr. Dulien was there?

A. Yes, it was confirmed, the same conversation the day before about the form of the payment, that is, letter of credit for \$160,000 the next day, and the other letter of credit for \$128,000 a few days later.

Q. Was anything said about the time of arrival of the ship, the time of the arrival of the ship bearing the wire?

A. It was said that the wire is coming from Honolulu and supposed to be arriving in Los Angeles on the 22nd of July.

Q. Now, do you think of anything else in the conversation of the 12th?

A. In essence, no, Mr. Bunn. [212]

Q. Speak as loudly as you can. Remember you are talking to that wall back there.

Where did you go from Dulien's office on the 12th?

A. I come to the bank, but I could not see Mr. Schroeder, I come to the bank to ask for the credit, but I could not see Mr. Schroeder because he was out of the office. Maybe he was sick.

(Testimony of J. B. Londono.)

Q. But he wasn't there, was he? A. No.

Q. Then where did you go? Did you have these samples with you? A. Yes.

Q. Where did you go?

A. I went to some engineers at Fourth Street, I remember, a gentleman who is supposed to be a friend of mine, because I was inquiring for some material.

Q. Don't tell us any conversation with that gentleman, but tell us where you went.

A. I asked him to inspect the wire, to see the quality of the wire with the samples, and I got the answer that the wire is good, strong enough, usable.

Q. Now when did you next have any communication of any kind from Dulien?

A. The 26th of July in the morning, I received a letter from Dulien. [213]

Mr. Dasteel: Just a moment. You have answered the question. Don't volunteer.

Mr. Bunn: May I have No. 3?

(The document referred to was passed to counsel.)

Mr. Bunn: I am about to show the witness this document——

The Court: No 3 for identification.

Mr. Bunn: Yes, your Honor.

Q. Have you seen that letter before?

A. Yes.

Q. When first?

A. In the morning of July 26 at Room 305, 408

(Testimony of J. B. Londono.)

South Spring Street. I receive this letter from the messenger, from the post office man.

The Court: You received a letter from the post office man?

The Witness: Yes.

Q. (By Mr. Bunn): Do you recognize the signature on that letter? A. Yes, Mr. Stanley's.

Q. You were by that time familiar with his signature? A. No, not in particular.

Q. But you received that by the mail?

A. Yes, special delivery mail, the same [214] day.

Mr. Bunn: I offer No. 3 for identification in evidence now. The document itself is dated the 25th. He said he received it on the 26th.

The Court: Admitted.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 3.)

Q. (By Mr. Bunn): Now, Mr. Londono, before you received that letter, had you received from any source any information about the time of arrival of the ship on which the wire was coming?

A. Yes.

Q. When?

A. On July 15th, Monday afternoon, I called Mattoon and Mr. Mattoon in my presence called Matson Navigation Company inquiring for the arrival, the date of the arrival, of the White Squall, and we were informed that the boat, it was late, and for that reason I——



(Testimony of J. B. Londono.)

Mr. Dasteel: Just a moment.

The Court: How do you know it was the "White Squall"?

The Witness: Because Dulien told Mr. Rendon the name of the boat and Mattoon & Company inquired of the boat coming from Honolulu from Matson Navigation Company.

Q. (By Mr. Bunn): Did you then learn when the boat would arrive?

A. In addition, Mr. Bunn, Mr. Gonzales [215] told us the name of the boat which the wire is coming on.

Q. Then you knew before you got that letter that you have last mentioned? A. Yes.

Q. That the boat was going to be late?

A. Yes.

Mr. Diether: May we clear up one thing? Did he learn from Mr. Dulien on July 12th that the name of the boat was the "White Squall"?

Q. (By Mr. Bunn): Did you learn from Mr. Dulien at Dulien's office on July 12th the name of the ship?

A. I don't know if I knew from Mr. Dulien or from Mr. Grinstein, but I remember well I knew from Mr. Gonzales at his office.

The Court: In these conversations on July 11th and 12th, was the name of the boat mentioned?

The Witness: I don't remember, your Honor.

Q. (By Mr. Bunn): Before you received this last-mentioned letter, had you had any communica-

(Testimony of J. B. Londono.)

tion from Dulien about the quantity of wire being different from 2700 tons originally mentioned?

The Witness: May I have that again?

(The question referred to was read by the reporter, as follows: [216])

("Q. Before you received this last-mentioned letter, had you any communication from Dulien about the quantity of wire being different from 2700 tons originally mentioned?")

The Witness: No.

Q. (By Mr. Bunn): Now, you got that letter on the morning of July 26th? A. Yes.

Q. When did you next thereafter have any contact with Mr. Schroeder?

A. July 26th in the afternoon.

Q. Where? A. At the bank.

Q. Was anybody else present besides you and Mr. Schroeder? A. Mr. Arturo Rendon.

Q. Was any other person, apparently an employee of the bank, present in the conference?

A. No.

Q. Now, will you tell us what conversation on that occasion ensued?

A. I saw Mr. Stanley of Dulien in the afternoon of July 26th—

Q. Before you saw Mr. Schroeder?

A. Yes, before. [217]

Q. Where did you see Mr. Stanley?

A. In the afternoon of July 26th when I got the letter from Dulien I went into Dulien's office and

(Testimony of J. B. Londono.)

asked Mr. Stanley—Mr. Grinstein was out of the office—about the letter he wrote me the day before, and he told that the wire is coming, that the quantity will be reduced in 400 tons.

Q. Reduced what?

A. In 400 tons, and inquired of the letter of credit. I proposed to take 2,000 tons from the lot of 2,300 tons, and he told me that Mr. Grinstein will come the same day to Los Angeles, or accept from me to open the credit the next day for 2,000 tons barbed wire, at \$107 per ton.

Q. Is that all?

A. I insisted, I asked Mr. Stanley if he can sell to me 1,000 tons of barbed wire, galvanized wire, and I offered to pay to him any price for the galvanized wire, but he insisted I must take both, 1,000 tons of galvanized and 1,000 tons of black.

Then I promised to call Mr. Grinstein the next day to deliver the next day the letter of credit. And I come to the bank and saw Mr. Schroeder, explained to him about the negotiations——

Mr. Dasteel: Just a moment. I object to that.

Q. (By Mr. Bunn): Now, tell us what was said at the conversation with [218] Mr. Schroeder.

A. I come to the bank, saw Mr. Schroeder, asked him about—I told him about the negotiations of 2,000 tons barbed wire, and asked him to open a credit in favor of Dulien for \$214,000.

Q. \$214,000?

A. \$214,000, and I offered to him to use to collect the credit I had from Colombia for \$160,000.



(Testimony of J. B. Londono.)

and asked Mr. Schroeder a loan for \$54,000 to cover the difference between \$160,000, my letter of credit, and the price of the wire that I bought from Dulien, \$214,000.

Q. What did Mr. Schroeder say?

A. Mr. Schroeder said that possibly he will agree, but he must contact with the loan department, and he asked me back the next day.

Q. Now, some time in that conversation of the 26th, was anything said then about the terms of the letter of credit you wanted, the conditions?

A. Generally speaking, no, because we—I noted the answer of Mr. Schroeder about the letter of credit. He told me to come back the next day.

Q. All right. Did you then later on the 26th have any communication with anybody from Dulien's place?

A. No, sir.

Q. Did you go to the Harbor on the 26th? [219]

A. No, sir.

Q. Now, what happened on the 27th, that is, did you have any contact with the bank on the 27th?

A. Yes, the 27th in the morning.

Q. What day of the week was that?

A. It was Saturday.

Q. Did anybody accompany you there?

A. Yes, Mr. Arturo Rendon. I saw Mr. Schroeder.

Q. Was anybody else present in the conversation?

A. No, not at that time.

Q. Now, tell us what was said.

A. I asked Mr. Schroeder about my previous

(Testimony of J. B. Londono.)

appointment, and he accepted to open me the credit on the condition that I would pay to the bank \$160,000, the bank will loan me \$54,000, guaranteed with the barbed wire.

Mr. Bunn: Guaranteed?

The Court: By the barbed wire, guaranteed by the barbed wire.

The Witness: And he had me to open the credit, and we discussed the commission.

Q. (By Mr. Bunn): What was said about the commission? A. One-fourth of 1 per cent.

Q. Was there any discussion about it?

A. Yes. [220]

Q. What discussion?

A. The first time Mr. Schroeder asked me for one-half per cent, and I suggested one-fourth per cent.

Q. For one-half per cent?

A. Yes, and I suggested, and he agreed to collect, to charge me, one-fourth of 1 per cent.

Q. Was there anything else said about the terms or conditions of the credit?

A. Yes. I explained to Mr. Schroeder that I required a commercial letter of credit, and I explained to him the documents I required.

The Court: What did you say about the documents?

The Witness: I required the bill of lading, an order bill of lading, negotiable bill of lading, on board, freight prepaid, and clean bill of lading, commercial invoice, insurance certificate. We dis-

(Testimony of J. B. Londono.)

cussed about the insurance, and Mr. Schroeder called his secretary, made the application for letter of credit, called his secretary and dictated the letter of credit.

Q. (By Mr. Bunn): Did you hear the dictation? A. Yes, sir. It was very close to me.

Q. Any further conversation then?

A. Yes. Mr. Schroeder asked me about when I will pay the bank the money, the \$54,000, and I offered Mr. [221] Schroeder to require the credit from Colombia.

Then I signed the application for letter of credit, and several minutes later I got the letter of credit from the bank. I delivered to Dulien in person, to Mr. Grinstein—

Q. Just a minute, please, sir.

Mr. Clerk, may I have original No. 4 and No. 5?

(The documents referred to were passed to counsel.)

Mr. Bunn: I am about to hand the witness document No. 4 for identification.

Q. Mr. Londono, have you seen that document before?

A. Yes. I signed the document on the 27th of July at the Citizens National Bank office.

Q. That is your signature? A. Yes, it is.

Mr. Bunn: We offer as Plaintiff's Exhibit No. 4 in evidence now, the application for letter of credit.

The Court: This is the original?

Mr. Diether: That is correct.



(Testimony of J. B. Londono.)

The Court: Very well.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 4.)

Q. (By Mr. Bunn): Mr. Londono, at that time did you sign anything on the back of that document? [222] A. No.

The Court: Nor did you sign a copy?

The Witness: I don't remember.

Mr. Bunn: We are trying to find it.

You have the original guarantee. May I have it?

Mr. Diether: All right.

Mr. Bunn: Mr. Diether, I have a photostatic copy but I don't have the original.

Mr. Diether: I have the original.

(The document referred to was passed to counsel.)

Q. (By Mr. Bunn): Now, Mr. Londono——

I am showing the witness, gentlemen, the document not heretofore numbered in my exhibits, being a carbon copy of irrevocable credit No. 3645, dated July 27, 1946, on the back of which appears an original signature of Mr. Londono.

Number 4 has been admitted, has it not?

The Court: Number 4 is admitted.

Mr. Bunn: The application for letter of credit?

The Court: Yes. You can mark that 4-A for identification.

(The document referred to was marked Plaintiff's Exhibit No. 4-A for identification.)

(Testimony of J. B. Londono.)

Mr. Hubert Morrow: May I be clear on that? That is a copy of the application? [223]

Mr. Bunn: No, sir, this is a copy of the original credit, but on the back of that copy——

The Court: Just a moment. Number 4 is the original application?

Mr. Bunn: Yes, sir.

The Court: That is a copy of the application?

Mr. Bunn: No, sir. This is a copy of the letter of credit, but on the back of this copy is an original signature that I want now to introduce.

Mr. Hubert Morrow: To keep the record straight, shouldn't that be 5-A? It is a copy of the letter of credit.

The Court: Yes.

Mr. Bunn: I think it should be.

Mr. Diether: That document that counsel has just referred to is a document which is commonly referred to as the letter of credit guarantee, and which is the same document as I referred to in my opening statement.

The Court: Number 4 is the application for commercial letter of credit, unsigned on the back.

Mr. Diether: That is correct.

The Court: Then No. 5—we do not have No. 5.

Mr. Bunn: We don't have it yet because I have to put them in in order here.

The Court: Where is No. 5? [224]

Mr. Bunn: I have it right here.

The Court: The original?

(Testimony of J. B. Londono.)

Mr. Bunn: Yes, sir, but before No. 5 is offered, the writing on the back of 4-A——

The Court: That is No. 5-A now. We will change it to 5-A.

(The document referred to was marked Plaintiff's Exhibit No. 5-A for [225] identification.)

The Court: It will be so marked because it is a copy of No. 5, if I understand it correctly.

Mr. Bunn: That is right.

Mr. Diether: Yes, your Honor.

Q. (By Mr. Bunn): Now, Mr. Londono, did you on that occasion sign the writing on the back of this document? I am showing you 5-A for identification. A. Yes.

Q. And that is your signature there?

A. Yes. And I marked the date with my own hand.

Q. You wrote that date in, July 29——

A. July 27.

Q. July 27, 1946? A. Yes, I marked that.

Q. And delivered that or left it with Mr. Schroeder?

A. The foreign department of the bank.

Mr. Bunn: We offer that as Plaintiff's Exhibit No. 5-A.

The Court: Admitted.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 5-A.)



(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Now, Mr. Londono, at the same time was there issued and delivered to you this No. 5 for identification? A. Yes. [226]

Q. Now, that is the original letter of credit?

A. Yes, it is.

Q. Were you at that time given a copy of that?

The Court: A copy of what?

Mr. Bunn: Of that document, the original letter of credit, No. 5, your Honor.

Q. ———or were you just given the original?

A. I am sure about the original. I don't remember about the copy.

Q. Were you given the original then of No. 5?

A. Yes.

Q. Did any further conversation then take place between you and Mr. Schroeder then and there?

A. Not that I can remember now.

The Court: Was the letter of credit, the original letter of credit, filled out in the typing in your presence at the same time as the application was? Did the girl fill that out at the same time you filled the application out?

The Witness: No, afterwards.

The Court: Immediately afterwards?

The Witness: Yes, immediately afterwards.

The Court: Was it the same occasion?

The Witness: Yes, same time.

The Court: She did not do both of them at the same time?

The Witness: No. Excuse me. [227]

Mr. Diether: I believe your Honor stated in

(Testimony of J. B. Londono.)

your question if he filled it out. I believe his testimony was that it was filled out by Mr. Schroeder.

The Court: What I am trying to get at, did the girl fill it out in his presence on the same occasion as he has testified Mr. Schroeder had the girl fill out the application.

Mr. Diether: That is correct.

The Witness: Yes.

Q. (By Mr. Bunn): Did you hear the dictation? A. Yes.

Q. By Mr. Schroeder of the fill-in for the letter of credit? A. Yes, sir, I did.

Mr. Bunn: Now they both have been received, I believe?

The Court: There was something on the back of one of these, No. 5. I do not know whether you want that in or not.

Q. (By Mr. Bunn): Now, Mr. Londono, when the original letter of credit, No. 5, was delivered to you by Mr. Schroeder, did it contain the endorsement which it now shows on its back?

A. Of course not.

The Court: Did you ever see that before now?

The Witness: No, sir. [228]

The Court: Do you offer the front side?

Mr. Bunn: I offer the front side, yes, sir.

The Court: The front side is admitted.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 5.)

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Now, Mr. Londono, what did you do with that original letter of credit?

A. I delivered it to Dulien Steel Products.

Q. When? A. About——

The Court: Just a minute now. Across the face of this is written the word "Exhausted."

Mr. Bunn: That I should have cleared up.

Q. Was the word "exhausted" on there?

A. No.

Q. When the original was delivered to you?

A. No, sir. I suppose that is printed by the bank after they paid the credit.

The Court: What about those initials on the side and the strikeout portions?

Mr. Bunn: It is obvious here that four lines of the printing on the form have been struck out, and in each margin appear the initials "W. G. P."

Q. Were these initials on there when the credit was [229] given to you?

A. I can't say because I don't pay attention to that. I remember the lines, it was marked.

The Court: The lines were stricken out?

The Witness: Yes, they were.

Mr. Bunn: Now this notation up in the upper right-hand corner, "Defendant's A, P. S. Noon," gentlemen, you all know what that is, do you not?

The Court: That is the notation of the deposition reporter.

Mr. Diether: That is correct.

The Court: That is on a number of these documents.



(Testimony of J. B. Londono.)

I suppose it will be stipulated that that was put on there by the reporter, Mr. Noon, when the deposition was taken, which was after the transaction?

Mr. Diether: So stipulated.

Q. (By Mr. Bunn): What did you do with the original letter of credit?

A. I went to Dulien's office and delivered it to Mr. Grinstein in person.

Q. About what time?

A. About 11:00 o'clock of July 27.

Q. Which was—— A. Saturday.

Q. Saturday? [230] A. Yes.

Q. Did you have any conversation then with Mr. Grinstein? Now if you did, tell us who else was there? A. Yes.

Q. Who else was present, if anybody?

A. I went with Mr. Arturo Rendon, and I think Mr. Stanley was there, too. I delivered the credit to Mr. Grinstein. I said, "This is big business for me."

Q. Louder, please.

A. I delivered the letter of credit to Mr. Grinstein and I say to him that it is big business for me. He answered, "Big business for me, too." And on that particular time, that particular occasion, he told that they pay to the government, Interior Department, \$28 per ton for this wire.

Q. You said a while ago that he told you that on the 27th, you mean on the 11th?

A. No, it was on the 27th when I delivered the letter of credit. It was clear in my mind.

(Testimony of J. B. Londono.)

Q. Anything else in that conversation?

Mr. Diether: Just a moment. May I move to strike that answer on the ground that it is incompetent, irrelevant and immaterial, as to what Dulien may have paid the government for this wire. It has no bearing on the issues involved in the case.

The Court: Motion denied. [231]

Q. (By Mr. Bunn): Now, that brings you up to about Saturday noon, doesn't it?

A. More or less.

Q. Then where did you go Saturday afternoon, July 27?

The Court: You mean in relation to this matter?

Mr. Bunn: Oh, yes; of course.

The Witness: After I delivered the letter of credit to Mr. Grinstein, I and Mr. Rendon went to have lunch on the way to Long Beach to see the wire. We inquired about the fact if the White Squall, the boat, carried the wire, if it was or was not in the dock at Pier 1-A at Long Beach, and we discovered that the White Squall had arrived.

We inquired from some man in the boat about the cargo, about the wire, and he told that no officers were aboard at that time and told us that we can't see nothing because the hatches were closed.

Then we went to Los Angeles.

Q. Did you go onto the boat at all?

A. Yes, up on——

Q. On the deck?

A. I was looking around the boat.

(Testimony of J. B. Londono.)

Q. Did you see any wire at all? A. No.

Q. About what time was that? [232]

A. It was between 2:00 o'clock and 3:00 o'clock.

Q. On Saturday afternoon?

A. Saturday afternoon.

The Court: That was the 28th?

Mr. Bunn: No, sir, the 27th.

The Witness: The 27th.

Q. (By Mr. Bunn): Then you came back to Los Angeles? A. Yes, sir.

Q. Now, the next day, Sunday, the 28th, do you of your own knowledge know whether or not there was any unloading of wire on that day?

A. No.

Q. Where did you go on that day?

A. I went to church.

Q. Did you go to the dock? A. No.

Q. Did you on that day see anybody from Dulien's place A. No.

Q. Or anybody from the bank? A. No.

Q. Now on Monday, the 29th of July, did you have any contact whatsoever with anybody from the Citizens Bank, any communication? [233]

A. Yes, on the 29th.

Q. What communication did you have?

A. On the 29th, about 10:00 o'clock, I was at the Hotel Clark and I had telephone call from the bank. I identified Mr. Thomas Moran because he spoke in Spanish.

Q. Had you previously talked with Mr. Moran in the bank at all? A. Yes, several times.



(Testimony of J. B. Londono.)

Q. You knew his voice?

A. Yes, Mr. Schroeder introduced him to me and I knew him. I recognized his voice, and he told me, "This is Moran."

Q. What were you engaged in when the call came in?

A. I was in the bath taking a shower, I remember.

Q. You answered the telephone?

A. Yes, I answered.

Q. Tell us what Mr. Moran said and what you said.

A. He say that they had the documents from Dulien but that there is some discrepanices between the requirements of the letter of credit and the documents because the documents—he used the word "documents"—showed 2300 tons of barbed wire instead of 2000 tons of barbed wire.

I answered Mr. Moran that that was agreed with Dulien that I bought 2000 tons of barbed wire, that the bank is going to pay for 2000 tons. I say that it is all right because it is very clear that I agree with Dulien to buy just 2000 tons of [234] barbed wire.

Q. Now, give us all of the conversation, all of that conversation that you remember.

A. In essence, that was the conversation.

Q. Is that all?           A. Yes.

Q. Then what next occurred?

A. About 10 minutes later I was ready to leave because I had an appointment with Dr. Olson, I

(Testimony of J. B. Londono.)

had another telephone call, Mr. Moran again, and he asked me if necessary to have from Dulien a letter stipulating the fact that I will have 2000 tons of barbed wire instead of 2300 tons of barbed wire.

I say that it is not necessary in my opinion because it is a fact that I bought from Dulien 2000 tons of barbed wire.

Q. Is that the whole of the conversation?

A. In essence, yes.

Q. Was anything in either of those conversations said specifically about a bill of lading?

A. No. He used the word "documents."

Q. Did he say anything about—you have told us everything he said? A. Yes.

Q. Then what happened?

A. I went in to Dr. Olson because I had an appointment, [235] and later in the afternoon—I saw Dr. Olson, of course—late in the afternoon I went in to Long Beach with Mr. Rendon.

Q. Where did you go?

A. To Long Beach, to Pier 1-A, to see the wire.

Q. When you got there did you see anybody working there?

A. No, it was late. Nobody was working there.

Q. What did you observe?

A. I observed a lot of barbed wire, small quantity, several coils of barbed wire, on the dock but I could not identify the wire or ask somebody about which wire is that wire because nobody was in the dock.

(Testimony of J. B. Londono.)

I went back to Los Angeles late in the afternoon.

Q. Did you at any time on the day of Monday, July 29, 1946, go into the Citizens Bank?

A. No.

Q. Or talk with anybody of the Citizens Bank except Mr. Moran in the telephone conversation?

A. No.

Q. Then what did you do on Tuesday, the 30th—withdraw that.

Did you on Monday, the 29th, receive any documents, any papers, from the Citizens Bank, on Monday the 29th? A. No. [236]

Q. Or any other message from the Citizens Bank than the telephone calls you have told us about?

A. No.

Q. Now on the 30th, Tuesday, where did you go?

A. I think I went to St. Vincent Hospital for a general inspection.

The Court: Anything with relation to this case. Did you go to Dulien's or the bank?

The Witness: No, your Honor. In the afternoon of the 30th I went to Long Beach, Pier 1-A, and Mr. Rendon, with a wire-cutter.

The Court: A pair of pliers, is that what he said?

The Interpreter: A pair of pliers, yes, sir, wire-cutter.

The Court: Wire-cutting pliers?

The Interpreter: Yes, sir.

The Court: Is that what he means?

The Interpreter: Yes, sir.



(Testimony of J. B. Londono.)

The Witness: He took several samples of wire from the lot in the dock.

Q. (By Mr. Bunn): Did you observe any men unloading wire then?

A. No, because it was late. It was around 6:00 o'clock. We went with Mr. Rendon and Mr. Hector Silva Herrera, a Colombian lawyer. [237]

Mr. Hubert Morrow: We can't hear him.

The Court: Are you now through the 29th?

Mr. Hubert Morrow: We would like to hear what happened when he went to Long Beach on the afternoon of the 29th.

The Court: I can tell you what his testimony was. He said that nobody was working, that it was late, he saw several coils of barbed wire on the dock, he could not identify them as nobody was there. From there on he did not go to the bank that day or he did not talk with anybody in the bank except the conversation with Moran.

Mr. Hubert Morrow: There was something about some pliers.

The Court: This is on the 30th. He said he went down to Pier 1-A with Mr. Rendon with a pair of pliers and clipped off several chunks of wire from the lot on the dock. It was 6:00 o'clock. We are up to that point now.

Mr. Hubert Morrow: Thank you.

Q. (By Mr. Bunn): And nobody was working?

A. Nobody was working. It was late. It was about 6:00 o'clock.

(Testimony of J. B. Londono.)

Q. Now had you on Tuesday, the 30th, been in the bank?      A. No.

Q. Or had any personal communication with anybody from Dulien's office? [238]      A. No.

The Court: We will recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Thursday, April 20, 1950.) [239]

April 20, 1950

Direct Examination  
(Continued)

By Mr. Bunn:

Q. Mr. Londono, you called my attention this morning to something you said you omitted from the recitation of the conversation on the 27th at Dulien's office when you took the letter of credit.

A. Yes.

Q. About an option?      A. Yes.

Q. Are you about to tell us a conversation?

A. Yes.

Q. With whom now?

A. With Mr. Grinstein, Dulien officer, when I delivered the letter of credit, I asked Mr. Grinstein for one option for the 300 tons of wire remaining, and he accepted, gave me the option. [242]

Q. Was there anything in writing on that?

A. No.

(Testimony of J. B. Londono.)

Q. Now we arrived last night in our course of testimony at the end of the day of Tuesday, the 30th of July. Will you tell what you did, if anything, in relation to this transaction or any one of them on July 31, 1946, Wednesday?

A. Yes. The 31st, about midday, about noon, I saw Mr. Sweeney of Mattoon & Company, who told me that Mr. Schroeder from the bank required me to go to the bank, and we went to the bank about noon the same day, and I saw Mr. Schroeder, who take me down to the office of the bank in order to sign a promissory note for \$54,535. That means the loan that the bank made me for the payment of the wire, the balance between the cost of the wire, \$214,000, and \$160,000 that I got from the bank.

Mr. Bunn: Now Mr. Clark, may I have the notes; that is, No. 21, 22, 17, 18, 19 and 20?

(The documents referred to were passed to counsel.)

Mr. Bunn: Gentlemen, I am about to show Mr. Londono certain of these documents, the numbers of which I have just called.

Q. I show you No. 22 for identification, which is a photostatic copy—

If your Honor please, Mr. Diether says that tomorrow he will be able to substitute the [243] original.

Q. —and ask you, Mr. Londono, calling your



(Testimony of J. B. Londono.)

attention to that portion of this document above the perforation line——

Mr. Dasteel: Pardon me, Mr. Bunn. Will you be kind enough to announce the date of the document and who it is from and who it is to so I can check it with the exhibits?

Mr. Bunn: Excuse me. July 31, promissory note to the Citizens Bank.

Q. Mr. Londono, is this document above the perforation line a photostatic copy of the note which you just said you signed? A. Yes, it is.

Q. With the exception of the No. 22 in blue there? A. Yes.

Q. Now at the time you signed such a note, did it have a form below the perforation line?

A. I didn't pay attention to that. I recognize my signature and it is my own signature.

Q. Did you write in the lower left-hand corner "408 South Spring"? A. No.

Q. That is not your handwriting?

A. That is not my handwriting.

Q. But this is a copy of the note that you did sign? A. Yes, sir.

Q. And so far as the part below the perforation line, [244] you do not remember? A. No.

Q. And did you look at the back side of the document that you signed? A. No.

Mr. Bunn: We offer this to be substituted tomorrow by the original but to be marked as Plaintiff's Exhibit 22 in evidence, that is, the portion of it above the perforation line.

(Testimony of J. B. Londono.)

The Court: Admitted.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 22.)

Q. (By Mr. Bunn): Now I am handing the witness my document No. 21, likewise marked for identification, dated July 31 and entitled "Deposit of Collateral." Mr. Londono, does that document bear your signature? A. Yes, it is.

Q. When you signed it, did it contain any of the penciled memoranda which are now on it?

A. No.

Q. Was the signature that appears to be that of R. Nelson for the bank on there?

A. I don't remember. I recognize my signature. That is all I remember. [245]

Q. Did you at that time, in the conference that you have just been telling about, sign a deposit of collateral agreement? A. Yes.

Q. And this was it? A. Yes, it is.

Q. I call your attention to the fact that the typing in that is a carbon typing? A. Yes.

Q. But that the document bears across its face in large red letters the word "original."

A. Original.

Q. But your signature is an original signature?

A. It is.

Mr. Bunn: We offer that in evidence as Plaintiff's Exhibit No. 21.

The Court: Admitted.

(Testimony of J. B. Londono.)

(The document referred to was received in evidence as Plaintiff's Exhibit No. 21.)

Mr. Bunn: Now at this time I ask counsel, on order that we may put this in chronologically, as chronologically as possible, to join me in a stipulation that the document, No. 17, customer's draft dated July 29, 1946, by Dulien Steel Products, Inc., of California, with the signature purporting to be L. P. Stanley, was—— [246]

Mr. Diether: For \$214,000.

Mr. Bunn: Yes—is the original draft for \$214,000 which on July 29, Monday, was by Mr. Dulien presented to the Citizens Bank, together with certain other documents that I shall enumerate.

Mr. Diether: So stipulated.

Mr. Bunn: The bank's counsel so stipulates.

The Court: I do not know what "together with certain other documents you shall enumerate" means.

Mr. Bunn: I will withdraw that part of it then. That this is the original sight draft presented by Dulien.

Mr. Diether: I so stipulate.

Mr. Dasteel: I so stipulate.

Mr. Laven: The government has no objection.

Mr. Hubert Morrow: We will so stipulate.

Mr. Bunn: We offer that as Plaintiff's Exhibit 17.

The Court: Admitted.



(Testimony of J. B. Londono.)

(The document referred to was received in evidence as Plaintiff's Exhibit No. 17.)

Mr. Bunn: Now I have in my hand No. 18 for identification, which is check No. 349929, cashier's check, dated July 29, 1946, signed by D. M. Wilkinson for the Citizens Bank, payable to Dulien Steel Products, Inc., of California, in the sum of \$214,000, and ask counsel for all defendants to join me in a stipulation that that is the original cashier's [247] check by which Dulien's draft of \$214,000 was paid by the Citizens Bank on the date it bears, namely, July 29.

Mr. Diether: So stipulated.

Mr. Hubert Morrow: That is so stipulated.

Mr. Laven: The government so stipulates.

Mr. Dasteel: So stipulate.

Mr. Bunn: I offer it as Plaintiff's Exhibit No. 18.

The Court: Just a moment. As to No. 17, did the stipulation include the fact that the draft had on its face all of the typing which now appears thereon?

Mr. Bunn: May I see it?

(The document referred to was passed to counsel.)

Mr. Bunn: I will expand the request and ask that the stipulation regarding No. 17 be expanded to include that.

The Court: That at the time of its presentation

(Testimony of J. B. Londono.)

it was in the identical form that it bears now except for the rubber stamp "Paid" on the face?

Mr. Bunn: Yes, sir.

The Court: And on the reverse, what about the endorsement on the reverse?

Mr. Bunn: First, may I add, and that the paid stamp which is now there was placed there on July 29, the date that it bears.

The Court: On July 29?

Mr. Diether: So stipulated. [248]

The Court: The date is written over it, it is stamped "28" and written over it "29."

Mr. Diether: It is unquestionably the 29th, your Honor.

The Court: Is that stipulation accepted?

Mr. Laven: The government accepts it.

Mr. Dasteel: So stipulated.

Mr. Hubert Morrow: So stipulated.

The Court: What about the back side?

Mr. Bunn: And that the back side bears the following endorsement: "Pay to the Order of Citizens National Trust & Savings Bank of Los Angeles, Dulien Steel Products, Inc., of California, by L. P. Stanley," and that that endorsement was placed thereon at the time of the presentation and clearance of the draft.

Mr. Diether: So stipulated.

The Court: In other words, upon that endorsement this cashier's check in the sum of \$214,000 was drawn.

Mr. Laven: So stipulated by the government.

(Testimony of J. B. Londono.)

Mr. Diether: So stipulated.

Mr. Hubert Morrow: So stipulated.

Mr. Dasteel: So stipulated.

Mr. Bunn: That completes No. 17, I believe.

Mr. Diether: Of course it is understood, your Honor, by that stipulation that we do not stipulate that other documents weren't presented at the same time, but merely that [249] that was one of the documents that was presented. In other words, you said, pursuant to that we issued that check.

The Court: Pursuant to this endorsement.

Mr. Diether: And the presentation to the bank of other documents, which I take it will come out in the testimony.

The Court: Very well, then. If you do not want to accept the stipulation. My thought was, what happened was this: This was presented. It calls for \$214,000. Stanley bought a cashier's check with it.

Mr. Diether: No, that is not correct. The draft was presented for \$214,000, together with other documents, and then upon the examination of those documents the check for \$214,000 was paid, was handed to Dulien. I don't want the stipulation to be understood that we paid it merely upon the presentation of that draft only.

The Court: In view of the opening statements made by counsel, I can see where they would not be justified in stipulating to the statement which you have just made.



(Testimony of J. B. Londono.)

Mr. Diether: I am not saying what other documents there were, but I say that I don't want to limit it, that that was the only document that was presented. I don't want to bind other counsel, of course.

The Court: At the time that No. 17 was presented?

Mr. Diether: That is correct.

Mr. Bunn: I so understood counsel. The purpose of the [250] stipulation basically is to show that that is the cashier's check which was issued in payment of the draft.

Mr. Diether: Yes, but it wasn't on that alone.

Mr. Bunn: I don't ask that you stipulate that no other documents were presented, but that that draft was presented and that this is the cashier's check which on the 29th of July was issued in payment of the draft.

Mr. Diether: There is no question about that.

The Court: Very well.

Mr. Diether: But at the same time it is understood that we received other documents, and you so stipulate, don't you, Mr. Bunn?

Mr. John Morrow: That is not the stipulation as far as we are concerned. We are not stipulating at this time that any other documents were received except the original freight bill. We didn't understand that any other stipulation was called for.

The Court: I understood Mr. Bunn's stipulation to be limited to this and not with relation to

(Testimony of J. B. Londono.)

any other documents and not an attempt on Mr. Bunn's part to foreclose any evidence concerning the presentation or lack of presentation of other documents.

Mr. Bunn: That is my position.

The Court: But simply that this was the draft presented and this was the cashier's check which this draft bought. [251]

Mr. Diether: With that understanding, I have no objection.

The Court: Very well.

Mr. Bunn: Now, Mr. Diether, may I put this in?

Mr. Diether: Yes.

Mr. Bunn: Now, gentlemen, I have in hand document No. 19 for identification dated July 27, 1946, bearing No. 3645, entitled "Commercial Credit" and appearing to be out of a bound book, and ask counsel—have you seen this?

Mr. Laven: Yes.

Mr. Bunn: —to join me in a stipulation that on July 27, 1946, Saturday, the bank opened on its books the commercial credit account evidenced by this document in favor of Dulien Steel Products, Inc., for account of J. B. Londono.

The Court: What is it?

(The document referred to was passed to the court.)

The Court: Mr. Diether, this I take it is an original document from the bank's records?

Mr. Diether: It is, your Honor.

(Testimony of J. B. Londono.)

The Court: And are you asking for a stipulation that this document shows what it shows? [252]

\* \* \*

Mr. Bunn: I want it left now, in view of the discussion, as marked for identification and then I can ask questions about it fully.

The Court: Very well. No. 19 is marked for identification. No. 17, 18, 21 and 22 are in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 18.)

(The document referred to was marked Plaintiff's Exhibit No. 19 for identification.)

Q. (By Mr. Bunn): Mr. Londono, did you at that conference on July 31—

I am about to show him a document No. 11, dated July 31, directed to Citizens Bank, bearing what purports to be his signature.

Q. —sign that document in the bank?

A. Yes.

Q. On Wednesday, the 31st?

A. The 31st; yes.

Q. Do you know any reason why that paper appears to have been cut off at the top?

A. Yes, because it was written in the bank.

Q. It was written in the bank? [254]

A. Yes.

Q. On a bank letterhead?



(Testimony of J. B. Londono.)

A. It was dictated by Mr. Schroeder to the secretary and I signed it.

Q. Who cut off the top?

A. Maybe Mr. Schroeder or the secretary.

Q. Was the top letterhead portion cut off before you signed it?      A. I can't say that.

Q. Did you cut it off?

A. Maybe Mr. Schroeder cut it off in my presence.

Q. Anyway, the bank wrote it?      A. Yes.

Q. And you signed it?      A. And I signed it.

Mr. Bunn: I offer as Plaintiff's Exhibit No. 11 this original letter.

The Court: Admitted.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 11.)

Q. (By Mr. Bunn): Do you remember whether or not you heard the dictation of that letter?

A. No.

Q. You mean you do not remember? [255]

A. I do not remember.

Mr. Hubert Morrow: Is that a carbon copy that is signed or is it a ribbon copy?

Mr. Bunn: It is the original document.

Mr. Hubert Morrow: I didn't ask you that. I have not seen it.

Mr. Bunn: I am sorry. The court has the original. Here is a copy.

(Exhibiting document to counsel.)

(Testimony of J. B. Londono.)

Mr. Bunn: It is my No. 11, and I am only offering the original. At the time I prepared that list I did not have the original and I didn't know whether I would have it at the time of the offer or not.

Mr. Hubert Morrow: Very well.

Mr. Bunn: On my list there is only one document No. 11 and it is now that original which the court has.

The Court: It is in evidence.

Q. (By Mr. Bunn): Now, Mr. Londono, I show you this document No. 9, which is a photostatic copy of a letter headed Los Angeles, California—I show you the original No. 9—a letter in Spanish—

Mr. Dasteel: What date?

Mr. Bunn: On my list I show it as a copy but they have now supplied me with the original. [256]

The Court: You say No. 9 or 11 in Spanish?

Mr. Bunn: It is a letter in Spanish.

The Court: I see. A letter in Spanish.

Mr. Bunn: Yes.

Mr. Diether: I don't believe it is a letter, it is an invoice.

Mr. Bunn: It is in Spanish. It is a document. It is a writing.

Mr. Dasteel: What is the date?

Mr. Bunn: July 24, 1946.

Q. I ask you, Mr. Londono, if that document contains your signature? A. Yes.

Q. Now I call your attention to the date of

(Testimony of J. B. Londono.)

July 24th in Spanish, and ask you if you remember when you signed that document?

A. The 27th of July.

Q. On Saturday? A. Yes.

Mr. Bunn: May I ask that the interpreter read the document into the record and then I will offer it.

Mr. Laven: For the purposes of our trial here, can't we have this translated into English and have copies of it made available?

The Court: Somebody is going to buy a transcript [257] some day and you can read it then.

Mr. Laven: Not at that late stage, but during the trial, so that if these could be translated we would have copies without having to go to the transcript.

Mr. Bunn: I will be glad to have copies of the translation made for you and submit to each of you a copy.

Mr. Laven: Thank you.

The Interpreter: What shall I do?

The Court: Read it in English.

Mr. Diether: Including all of the heading as well.

The Interpreter: This is a letterhead from J. B. Londono, representations, agencies, Medellin, Colombia, S. A., Central Building, telephone 10512, post office, air mail 979, cable and telegrams, Jotabe, spelled J-o-t-a-b-e.

In typewriting, Los Angeles, California, July 24, 1946.



(Testimony of J. B. Londono.)

Addressed to Senor Don, D-o-n—that is a title in Spanish equivalent to esquire—Alberto Echavarria, Medellin (Colombia).

On account with J. B. Londono, Los Angeles, California.

This appears to be a statement, accounting statement.

1000 tons galvanized barbed wire, new, double twist, at U. S. 160 dollars per ton cif Colombian port.

Then debit to the right-hand side of the paper.

U. S. 160,000 dollars. Then in letters, one hundred sixty thousand dollars. [258]

Double space.

Credit, No. 3578 of Citizens National Bank of Los Angeles. One line.

Second line: Ditto mark, No. 4036 of Banco Commercial Antioqueno, Medellin. And then in parentheses Colombia abbreviated, C-o-l, end of parentheses, period.

Signed J. B. Londono.

That is all that is on the document.

Mr. Bunn: The document has also been marked and now bears the marking, "Plaintiff's 3, P. S. Noon," who was the reporter who took the deposition.

Q. Now, Mr. Londono, you said you signed that on the 27th? A. Yes, the 27th.

Q. What did you do with it?

The Court: Whereabouts?

Q. (By Mr. Bunn): Yes, where were you?

(Testimony of J. B. Londono.)

A. At the bank, Citizens National Bank.

Q. In whose presence?

A. Mr. Schroeder's presence.

Q. What did you do with it?

The Court: Did you write it before you took it over there?

The Witness: Yes, your Honor, but I signed it in the [259] bank.

Q. (By Mr. Bunn): What did you do with the paper?

A. I delivered it to the foreign department of the Citizens National Bank.

Q. To Mr. Schroeder himself?

A. I can't say to Mr. Schroeder, but someone in the foreign department of the bank.

Q. But to the bank? A. Yes, to the bank.

Mr. Bunn: We offer that as Plaintiff's Exhibit 9 in evidence.

The Court: Admitted.

(The document referred to was marked Plaintiff's Exhibit No. 9 and received in evidence.)

Mr. Diether: Do I understand that you are going to have an English translation attached to that exhibit and made a part of it?

Mr. Bunn: I shall. I would like to have over the week end to do that, if I may.

What is No. 8, Mr. Stacey?

The Clerk: This photostatic copy.

(The document referred to was passed to counsel.)

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): I am showing the witness an original document dated [260] July 29, 1946, from the bank, that is, on the bank's letterhead, signed W. Glen Powers, Pro-Manager, directed to J. B. Londono, and ask you, Mr. Londono, if you ever saw that document before?

Mr. John Morrow: What number on your list, Mr. Bunn?

Mr. Bunn: No. 8.

The Witness: Yes.

Q. (By Mr. Bunn): When did you first see that?

A. The 31st of July when Mr. Schroeder handed it to me in the bank.

Q. Do you remember whether or not it was on the second floor of the bank at Mr. Schroeder's office or down on the main floor where you signed the note?

A. It was in the bank. I don't remember if on the second floor or the first floor.

Q. But it was handed to you?

A. By Mr. Schroeder personally.

Mr. Bunn: I offer this in evidence.

The Court: On Exhibit No. 9 some of the typing is in black lettering and some in red lettering in a different type. Was it in that shape when you took it to the bank or did you put the red lettering on there?

The Witness: No, I put the black lettering only. The red lettering is the translation from Spanish done at the [261] bank.



(Testimony of J. B. Londono.)

The Court: At the time you signed it?

The Witness: After, I think, your Honor.

The Court: Well, that was not in that condition when you signed it?

The Witness: No.

The Court: Just the black lettering was there when you signed it?

The Witness: Yes, your Honor.

The Court: Very well.

Mr. Bunn: We offer this as Plaintiff's Exhibit No. 8, your Honor.

Mr. Diether: In that connection, your Honor, this Exhibit No. 8 for identification that the witness has just identified, you will note that there is a typewritten statement at the bottom that there is a receipt attached. The witness has not produced that receipt or it is not attached to the letter at this time.

Mr. Bunn: I will clear that up.

Mr. Diether: Do you wish to do that now?

The Court: Have you offered it in evidence?

Mr. Bunn: I am offering it now.

The Court: I think you had better clear it up first.

Mr. Bunn: All right.

The Court: When did he say he got that? [262]

Mr. Bunn: He got that on Wednesday, the 31st.

The Court: Very well.

Q. (By Mr. Bunn): I call your attention to the fact that it is dated July 29, Mr. Londono.

A. Yes.

(Testimony of J. B. Londono.)

Q. Which was Monday.

A. But it was delivered to me the 31st.

The Court: And you had not seen it before the 31st?

The Witness: I haven't seen it before the 31st.

Mr. Hubert Morrow: This refers to Exhibit 8?

The Court: To Exhibit 8.

Q. (By Mr. Bunn): Now, Mr. Londono, is that letter in the exact form in which it was delivered to you by Mr. Schroeder on the 31st, the face of it?

A. It is.

Q. Now I call your attention to the fact that this letter says, "Gentlemen, we have today made the following payment for your account under your number (blank), our number 3645, issued in favor of Dulien Steel Products, Inc., Los Angeles, California, foreign amount, rate, U. S. dollars 214,000 correspondence commission and charges, our commission of one-quarter of 1 per cent, \$535, interest for (blank) days at (blank) per cent—— [263]

Mr. Diether: You don't have to read it all.

Mr. Bunn: I am going to ask him something about it.

And that it says: "This payment has been made against the following documents which we enclose, 1 Bill of Lading, 1 Invoice," and that there is an asterisk immediately to the left of the figure 1 Bill of Lading, and at the bottom of the document an asterisk between certain of the words, where it says "Documents marked asterisk have been delivered

(Testimony of J. B. Londono.)

to Mattoon & Co., as per your instructions and attached receipt."

Q. Now I ask you, did you at that time actually receive any documents with this letter?

A. No.

The Court: Was there a receipt attached to it, anything attached to it?

The Witness: Nothing, your Honor.

The Court: Just that one piece of paper?

The Witness: Yes, your Honor.

The Court: Was any receipt shown to you?

The Witness: Let me see. At the same time Mr. Schroeder got me the invoice.

The Court: You mean he showed you the invoice?

The Witness: He delivered it to me.

The Court: He delivered to you the invoice?

The Witness: Yes.

The Court: That is the freight bill? [264]

The Witness: No, the commercial invoice made by Dulien, commercial invoice.

Mr. Bunn: I am looking to see if I have the document he is referring to.

The Court: Is that Exhibit A attached to the complaint?

Mr. Bunn: No, sir.

The Witness: Mr. Bunn, you have the white copy of that invoice.

Mr. Bunn: Mr. Stacey, I think you have the original.

The Court: It does not appear to be listed here.



(Testimony of J. B. Londono.)

Mr. Bunn: It is No. 6.

(The document referred to was passed to counsel.)

The Court: What date was that, July 31?

The Witness: July 31, after 12:00 o'clock.

The Court: After 12:00 o'clock?

The Witness: Yes.

Q. (By Mr. Bunn): Now I show you No. 6 for identification, entitled "Invoice Order No. 069910," on the printed heading of Dulien Steel Products, Inc., of California, and ask you if that is the document you last referred to as an invoice delivered to you on the 31st? A. Yes, it is.

Mr. Diether: Is that your No. 6?

Mr. Bunn: That is my No. 6. [265]

Q. And delivered to you by whom?

A. By Mr. Schroeder in the bank.

Mr. Bunn: It bears date, gentlemen, it says invoice date 7-29-46, date ordered 7-12-46, date shipped 7-29-46, Invoice No. 5795, freight charges prepaid f.o.b. point Los Angeles.

We offer that as Plaintiff's Exhibit No. 6 in evidence.

The Court: Let me see No. 8 also.

(The document referred to was passed to the Court.)

The Court: Mr. Londono, I understand your testimony to be that on July 31 at 12:00 o'clock noon or thereafter Mr. Schroeder handed you these two documents in the bank.

(Testimony of J. B. Londono.)

The Witness: Yes, sir.

The Court: And nothing else?

The Witness: Nothing else, except the freight bill. Yes, but I am not sure whether Mr. Schroeder handed to me or Mr. Sweeney. I was present when the bill of freight was delivered, was handed, but I am not sure whether I take it in my hands or Mr. Sweeney take it with his hands.

The Court: Very well.

Mr. Hubert Morrow: I thought I heard him say Powers.

The Witness: Schroeder.

Mr. Diether: Just a moment, your Honor, before you rule on that.

Mr. Hubert Morrow: We would like to examine both 6 and 8, Mr. Bunn, before the court rules.

Mr. Bunn: I am about to offer another one in connection with it. You would like to see them all probably together. [266]

Mr. Hubert Morrow: All right.

The Court: What do you want that marked as 8-A?

Mr. Bunn: Yes.

(The document referred to was marked Plaintiff's Exhibit No. 8-A for identification.)

Q. (By Mr. Bunn): I show you what purports to be a carbon copy of No. 8, except that this carbon copy appears to bear your signature.

A. Yes.

Q. Is that correct?

A. That is correct.

(Testimony of J. B. Londono.)

Q. That is, to a receipt form stamped at the bottom of it which says, "Received from Citizens National Trust & Savings Bank of Los Angeles the within described enclosures."

A. That is my signature.

Q. Did you sign this carbon copy then?

A. Yes.

Q. And delivered it to whom?

A. To the bank.

Mr. Bunn: We offer this as Exhibit 8-A in evidence. And now, Mr. Morrow, when the Court gets through with them I will show them all to you.

Mr. Laven: Just a minute, before the offer is ruled on.

The Court: Very well. You all want to see [267] them.

Where does it say received.

Mr. Bunn: Down in the lower left-hand corner.

The Court: I see. It is very difficult to read, I will say.

Mr. Bunn: I had on my glasses but I can see it.

(The documents referred to were exhibited to counsel.)

Mr. Diether: This might be an appropriate time for the recess, your Honor.

The Court: Very well. We will have a short recess.

(Short recess.) [268]

The Court: Proceed.



(Testimony of J. B. Londono.)

Mr. Bunn: I will now offer in evidence No. 6, which is Dulien Steel Products——

Mr. Dasteel: That has already been offered.

Mr. Bunn: No, it wasn't received. I am asking the Court to receive it now, there being no objection, as I understand it.

The Court: No. 6, 8 and 8-A were being examined during the recess.

Mr. Bunn: I now ask the Court to receive No. 6 in evidence.

Mr. Hubert Morrow: No objection.

The Court: Admitted.

(The document referred to was marked Plaintiff's Exhibit No. 6, and was received in evidence.)

Mr. Bunn: And I now ask permission to withdraw my offer in evidence of 8 and 8-A and let them merely be marked for identification at this time.

The Court: So ordered.

Mr. Bunn: Now, my attention at the recess was called to the fact that document No. 1, which is the letter which the interpreter read, or the statement which the interpreter read into the record, and which was offered and received as an original is an executed carbon duplicate.

Mr. Diether: That is Exhibit 9, isn't it? [269]

Mr. Dasteel: Is it No. 1 or No. 9?

Mr. Bunn: No. 9 I am talking about.

Mr. John Morrow: Mr. Bunn, may I suggest

(Testimony of J. B. Londono.)

that you refer to the document on your list when you start out. We can't tell what you are talking about at any time.

The Court: You mean at any time?

Mr. John Morrow: I mean when he starts out, your Honor.

Mr. Bunn: I am sorry. I won't make any more mistakes, I promise.

The Court: You are now talking about document 9 or document 1?

Mr. Bunn: Document 9.

Mr. Hubert Morrow: That is an exhibit.

The Court: That is in evidence.

Mr. Bunn: But I offered it and it was received upon my statement that it was an original. My attention has been called by Mr. Diether and Mr. Schroeder to the fact that it is an executed duplicate but that it is actually a carbon writing.

The Court: Very well.

Mr. Bunn: And with that explanation I want to ask Mr. Londono, and do now:

Q. If at the time that that was signed by you and delivered to the bank, did you sign and deliver any other exactly similar documents? [270]

A. Yes, I delivered three.

Q. Three signed ones?           A. Yes.

Q. To the bank?

The Court: All identical with that?

The Witness: Yes.

Mr. Bunn: All right. That clears it I think.

Q. I show you No. 7 for identification, an orig-

(Testimony of J. B. Londono.)

inal freight bill, and calling your attention to the face of it, the front of that document, I ask you if you ever saw that before?      A. Yes.

Q. When did you first see that document?

A. July 31, 1946, at the Citizens National Bank.

Q. Who was in your immediate presence when you first saw it?

A. Mr. Sweeney and Mr. Schroeder.

Q. In whose hands, if any, was the document when you first saw it?

A. In Mr. Schroeder's or Mr. Sweeney's hands.

Q. You don't remember which?

A. No, I can't remember.

Q. Was there then any conversation between any of the three of you about that document?

A. Yes. [271]

Q. What was the conversation?

A. Mr. Schroeder required from Mr. Sweeney and from myself to have the endorsement of this document from Dulien.

Q. What did he ask?

A. He asked to obtain the endorsement of the document.

Q. Is that all?      A. That is all.

Q. What then, if anything, did you do?

A. I went to the Dulien's office?

Q. Alone?

A. With Mr. Sweeney, and obtained from Mr. Stanley the endorsement in the back of the paper.

Q. Will you turn that over, please, and look at the reverse side of it?      A. Yes.



(Testimony of J. B. Londono.)

Q. When you left the bank was any of that on the reverse side that is on there now?

A. Nothing.

Q. And did you see it put on there, that endorsement? A. Yes, it was in my presence.

Q. Who typed it? A. Mr. Stanley himself.

Q. Did you see Mr. Stanley sign it?

A. Yes, sir, I saw him.

Q. Where did that take place? [272]

A. At Dulien's offices, South Alameda Street.

Q. Was there present then and there any other person that you and Mr. Sweeney and Mr. Stanley?

A. Not that I remember.

Q. Was Mr. Stanley's signature affixed thereto in Mr. Sweeney's presence as well as in yours?

A. Yes.

Q. Do you remember any conversation which then and there took place between the three of you?

A. No.

Mr. Bunn: May that then be marked for identification at the present time?

The Court: So ordered; No. 7.

(The document referred to was marked Plaintiff's Exhibit 7, for identification.)

Q. (By Mr. Bunn): Now, Mr. Londono——

The Court: Before you get on another subject, may I see Exhibit 6?

(The document referred to was passed to the Court.)

(Testimony of J. B. Londono.)

The Court: I understood your testimony to be, Mr. Londono, that on Exhibit 11, that was handed to you, or dictated at the bank on July 31, and you signed it at that time?

The Witness: Yes, sir.

The Court: And that on the same day you received Exhibit [273] No. 5, this commercial letter of credit.

The Witness: Yes, your Honor.

The Court: That was the same occasion at the bank, or had you been in and out?

The Witness: It was on the same day.

The Court: At the same time?

The Witness: More or less it was in the same hour of the day.

The Court: Did you give them this letter of July 31, 1946, before they handed you No. 6?

The Witness: I can't say that.

The Court: You do not remember?

The Witness: I don't remember that.

The Court: What did you do with this commercial invoice after you got it?

The Witness: I delivered it to Mr. Bunn.

The Court: You kept this with you until you delivered it to Mr. Bunn?

The Witness: Yes, your Honor.

The Court: This never went to Mattoon & Company?

The Witness: No, sir.

Mr. Hubert Morrow: What number is that, your Honor?

(Testimony of J. B. Londono.)

The Court: No. 6, the commercial invoice, so-called.

Very well. That is all I have.

Mr. Bunn, you were going to move on to another subject, [274] I believe.

Mr. Bunn: Yes.

Q. Mr. Londono, do you remember in whose physical possession this freight bill was on the trip from the bank to Dulien's office, yours or Mr. Sweeney's? A. In mine, in my possession.

Q. Now, after Mr. Stanley affixed his signature to that endorsement on the back of that freight bill, what did you do?

A. I went to Moore-McCormack Lines pier.

The Court: Did Stanley give it to you or Sweeney?

The Witness: The document was given to me by Mr. Stanley after the endorsement was made.

Q. (By Mr. Bunn): And you went then where?

A. I went to the Moore-McCormack pier to see some wire that the day before we ordered to move from the Long Beach dock.

Q. Did Mr. Sweeney accompany you there?

A. Yes.

Q. Approximately what time of day was that?

A. It was in the afternoon about 4:00 o'clock.

Q. And what did you observe at the Moore-McCormack pier?

A. I saw a lot of barbed wire, very rusty wire, and I asked Mr. Sweeney, "Don't ship that wire to Colombia because it was——" [275]



(Testimony of J. B. Londono.)

Mr. Diether: Just a moment. I can't hear him.

The Court: I asked Mr. Sweeney, "Don't ship that wire to Colombia because——"

The Witness: "——it was very rusty wire and I was obligated to ship good wire to Mr. Echavarria."

Mr. O'Malley: I am confused whether this is conversation or a conclusion.

The Court: This is what he said to Mr. Sweeney at the pier, according to his testimony.

The Witness: And Mr. Sweeney promised to me to call people to select the wire, to separate the good wire from the bad wire, and I accepted.

Q. (By Mr. Bunn): You mean you accepted Mr. Sweeney's suggestion? A. Yes.

Mr. Dasteel: Just a moment. I object.

The Court: The objection is sustained to the question.

Mr. Diether: And the answer may be stricken then?

The Court: The word "Yes" will be stricken.

Mr. Dasteel: I ask that the statement volunteered by the witness to the effect that Mr. Sweeney promised certain things, I think he should say what Mr. Sweeney said.

The Court: We understand that. He is doing the best he can. He is doing pretty good, too, in English.

The Witness: Thank you, your Honor. [276]

The Court: Now go ahead with your conversation with Sweeney at the pier.

(Testimony of J. B. Londono.)

The Witness: We spent a lot of time at the pier looking at all the wire.

Q. (By Mr. Bunn): At the Moore-McCormack pier?  
A. At the Moore-McCormack pier.

The Court: Let us clear this up now, what Sweeney said you or you said to him about segregating the wire.

The Witness: Yes. He said that he will call some people who used to do that kind of jobs and he will let me know how much it cost, and we went to the office the same day, the same afternoon, and nothing else that day.

Q. (By Mr. Bunn): You mean back to the Los Angeles office?  
A. Yes.

Q. Of Sweeney?  
A. Yes.

Q. Mattoon & Company?

A. Mattoon & Company.

Q. Now, that is Wednesday afternoon, the 31st?

A. Yes, sir.

Q. Did you on that day make any effort to communicate with Dulien?

A. Not that day. [277]

The Court: You mean later? He had already communicated with him.

Mr. Bunn: Later I mean; yes.

Q. Did you later that day do anything else in regard to this barbed wire, that day?  
A. No.

Q. The next day on the calendar would be August 1st?  
A. August 1st.

Q. Thursday?

(Testimony of J. B. Londono.)

A. Yes. I went to Mattoon's office.

Q. Let me ask you, what did you do on August 1st about the barbed wire?      A. Yes?

Q. What did you do?

A. I went to Mattoon's office to see Mr. Sweeney and asked him what about the designation I asked the day before, and he told me that he called some people, I don't remember the names, and say that the segregation will be made the same day or the next day, and I know that it was made because some charges, some invoices, was presented to me by Mr. Sweeney.

Q. Now let's proceed with anything you did——

Mr. Diether: Just a moment.

The Court: The latter portion of it may be stricken as a conclusion.

Mr. Diether: Thank you. [278]

The Court: Except the portion that he said he later received an invoice.

Mr. Bunn: Is that clear, Mr. Morrow?

Mr. Hubert Morrow: Yes.

The Witness: Then the same day in the morning——

Q. (By Mr. Bunn): August 1st?

A. August 1st, in the presence of Mr. Sweeney I dictated a letter to his secretary, Miss Betty, a letter to Dulien Steel Products, stating that the quality of the wire——

Q. Just a moment. I will show you a letter.

Gentlemen, I have in hand document No. 23 for



(Testimony of J. B. Londono.)

identification, but my list shows a copy of it. I now have the original of it, and I ask the witness if that is the letter he refers to.

Mr. Dasteel: What is the date?

Mr. Bunn: August 1, 1946, a letter to Dulien Steel Products, Inc.

Q. Is that the letter you referred to?

A. Yes, it is. I mailed it myself.

Q. Does it bear your signature?

A. Yes, it is.

Q. You took it yourself to the post office?

A. Yes.

Q. In the envelope which is attached to it [279] now? A. Yes.

Q. And had it registered?

A. Registered; yes.

The Court: I take it, Mr. Bunn, the letter was handed to you by Mr. Dasteel in court this morning?

Mr. Bunn: Yes, sir.

The Court: Very well.

Q. (By Mr. Bunn): And except for the stamp which bears "Received, August 2, 1946" in the upper right-hand corner of that document, is that letter on its face exactly as you mailed it to Dulien?

A. Yes, it is.

Q. In the attached envelope?

A. Yes, it is.

Mr. Bunn: We offer that as Plaintiff's Exhibit No. 23.

The Court: Admitted.

(Testimony of J. B. Londono.)

(The document referred to was marked Plaintiff's Exhibit 23, and was received in evidence.)

Q. (By Mr. Bunn): Now, do you remember about whether that was in the morning or afternoon of August 1st?

A. It was in the morning.

Q. And did you have any contact later that day with anybody from Dulien's place? [280]

A. No.

Q. When did you next have any contact with anybody from Dulien's place?

A. August 5th of July, 1946.

Q. Pardon? A. August 5, cinco.

Q. That was Monday, wasn't it?

A. I don't know.

Q. You are sure it was August 5th?

A. August 5th; yes.

Q. With whom did you then have contact?

A. Mr. Sweeney, Mr. Rendon and I went to Mr. Dulien's office and saw Mr. Grinstein, and asked him to go to the dock to see the wire, and he accepted to go with us. Then we went in Mr. Rendon's car to the dock, Pier A.

Q. A little louder, please.

A. We went to the dock with Mr. Grinstein and in the presence of the wire he expressed——

Q. Who?

A. Mr. Grinstein—surprise and say that he can't understand——

Mr. Diether: Just a moment.

(Testimony of J. B. Londono.)

Mr. O'Malley: One minute, please. The witness has said that Mr. Grinstein expressed surprise. I ask that that be stricken. [281]

The Court: Let him finish his answer and we will see.

The Witness: And say that he can't understand why Mr. Dulien told him that the wire was good. He don't know. And added that this business is going to make it crazy to him.

The Court: Going to do what?

The Witness: It is going to make it crazy to him.

Mr. Dasteel: I would like the interpreter to get that statement in Spanish.

The Interpreter: Mr. Grinstein said that Mr. Dulien had told him that the quality of the wire was good, that inasmuch as it wasn't so, that it was going to make him crazy handling it.

Mr. Diether: What was the last word?

The Interpreter: Handling.

The Court: Handling the wire.

The Interpreter: Handling the sale of the wire, I suppose.

Mr. Diether: Ask the witness if that is what he means.

The Interpreter: That he was distressed to have sold the wire as good, being in such a damaged condition.

Mr. Hubert Morrow: I don't understand it. Who was going to be driven crazy?

The Court: Mr. Grinstein.



(Testimony of J. B. Londono.)

Mr. Hubert Morrow: Mr. Grinstein?

The Court: Mr. Grinstein. The witness testified that [282] Mr. Grinstein said that it would make him crazy to handle it.

Mr. Hubert Morrow: I see.

The Court: Because of its condition.

Q. (By Mr. Bunn): Anything else said in that conversation?

A. Yes. We went to the boat——

Mr. Dasteel: Who?

The Witness: Mr. Grinstein, Mr. Sweeney, Mr. Rendon and I, and because some wire is coming, it was coming from the boat directed to cars for Gonzalez & Blanco, Mr. Grinstein protest and asked to have the same right, in other words, to have the right to take the good wire from the boat, to direct it. At that time we saw on the dock chalk marks, white chalk marks, "Dulien Steel Products" and "Gonzalez & Blanco." On the right a big pile marked "Gonzalez & Blanco" and on the left a big pile marked "Dulien Steel Products." There was no marks with Londono.

Q. (By Mr. Bunn): Was there any noticeable difference between the quality of the wire in those two piles?

Mr. Dasteel: I object to that, your Honor. That calls for a conclusion of the witness. It would be impossible for him to testify as to a difference, the degree of difference.

The Court: He can testify to what he saw. [283]

Q. (By Mr. Bunn): Did you see any difference?

(Testimony of J. B. Londono.)

A. Yes. All the wire looked like the same wire, but the difference I saw. It was that on the right pile, Gonzalez & Blanco, I saw smaller coils than the other pile.

Q. More small coils?

A. Small coils, 28-pound coils.

Q. What did you see about the quality of the wire in the two separate piles?

A. It looked bad quality all over.

Q. I didn't get the answer.

A. It looked rusty, all of it, with the exception of the wire coming from the boat directed to the cars for Gonzalez & Blanco.

Q. When you say coming, you mean then being moved?

A. The wire that was going or was being unloaded from the boat to the cars that belonged to Gonzalez & Blanco was decidedly of a better quality. It was being picked up in the holds of the boat.

The Court: What did Mr. Grinstein say?

The Witness: He said that he want to have the right to do the same.

The Court: Who did he say that to?

The Witness: To the man in the dock, to the man in the boat. [284]

The Court: To a man in the boat?

The Witness: Yes.

The Court: What did the man in the boat say?

The Witness: I can't remember what he say, your Honor.

Q. (By Mr. Bunn): What did you say?

(Testimony of J. B. Londono.)

The Court: He said he can't remember what he said. Do you remember whether or not he said yes or no? That cannot be leading and suggestive, because you cannot lead a person in both directions.

The Witness (Through interpreter): That answer from the man in the boat must have been in the negative, because Mr. Grinstein continued arguing.

The Court: What did Mr. Grinstein continue to say?

The Witness: We take the car again to the office, and I asked him for the right of the renegotiation of the price of the wire, and he offered me to wait, or he asked me to wait until the complete discharge, unloading, and then promised me that we will renegotiate the wire.

I asked Mr. Grinstein, I remember well, "Who is going to pay the segregation of the wire?," and he said that I must pay.

The Court: Did you ask him for all good wire?

Mr. Diether: Asked who?

The Court: Mr. Grinstein. [285]

The Witness: Yes, I asked for good wire. I told him that I bought good wire from Dulien and I want to have good wire, and he asked me to wait for the complete unloading, take the best wire, then Dulien will remove 300 tons of wire and we will renegotiate the black, the bad wire.

Mr. Diether: Will you read that answer, Mr. Reporter?

The Court: I could not do that because Matson refused to give me the right to select the wire.



(Testimony of J. B. Londono.)

Mr. Diether: Before that, your Honor.

Mr. John Morrow: We move to strike the witness' answer with respect to what Matson did as being not responsive.

The Court: Let us hear the whole answer.

(The answer referred to was read by the reporter as follows: "A. Yes, I asked for good wire. I told him that I bought good wire from Dulien and I want to have good wire, and he asked me to wait for the complete unloading, take the best wire, then Dulien will remove 300 tons of wire and we will renegotiate the black, the bad wire. But I could not do that because Matson refused to give me the right to select the wire.")

The Court: Is that what you told Grinstein?

The Witness: Yes, in the car on the way back from the pier to Dulien's office. [286]

The Court: The motion to strike is denied.

Mr. Hubert Morrow: Is it clear that your Honor's question referred to that conversation at that time? The witness now says something that sounds to me like it might have been a later conversation.

The Court: The witness has testified that he, Mr. Sweeney and Mr. Rendon and Mr. Grinstein, went to the Harbor, and this is all part of the same transaction.

The Witness: Yes, sir.

The Court: They went down there, and your

(Testimony of J. B. Londono.)

conversation on the dock and this is on the way back?

The Witness: Yes.

The Court: And in the office?

The Witness: Yes, sir. [287]

\* \* \*

Q. Mr. Londono, in that conversation on the 5th that you have just been telling about, when you went back to Dulien's [288] office, did you then tell Mr. Grinstein that Matson would not let you select?

A. No.

Mr. Diether: I object to that as leading and suggestive.

\* \* \*

The Court: I think it is leading and suggestive, but I have overruled the objection because the question is calculated to elicit some clarity concerning this conversation. The objections are [289] overruled.

\* \* \*

Q. (By Mr. Bunn): Do you remember anything else of the conversation on that day?

Mr. Hubert Morrow: What day?

Mr. Bunn: On the 5th, with Grinstein.

The Witness: No.

Mr. Diether: Where? At the dock or any other place?

Mr. Bunn: He has taken us from those persons, from the dock back to Grinstein's office.

Mr. Diether: I hadn't heard anything about the office.

(Testimony of J. B. Londono.)

The Court: Yes, he testified that he got back to the office, and after he got back to the office Grinstein told him to wait for the complete unloading and they would segregate the good wire from the bad, Dulien would take 300 tons, he could take his good wire, and they would renegotiate the price on the bad wire.

Mr. Diether: I understood that was on the dock.

The Court: That was at the office. In any event, it is [290] all part of one conversation.

The Witness: One conversation. It was on the way from the dock to Dulien's office, then we left Mr. Dulien at his office.

The Court: Dulien?

The Witness: Mr. Grinstein, at his office, at the door.

The Court: You left him at the door?

The Witness: Yes. And one day later, or two days later, I went Mr. Dulien's office again and I received from him one letter confirming the conversation we had at the dock.

Mr. Dasteel: Your Honor, please, I object to this, that it is voluntary. He is leaving August 5th and he is two days ahead now.

The Court: Yes, it is voluntary.

Let me ask you a question: Mr. Sweeney was at the dock with you?

The Witness: Yes, sir.

The Court: Did you talk to the man on the boat?

The Witness: No.



(Testimony of J. B. Londono.)

The Court: Did Mr. Sweeney talk to the man on the boat about getting good wire?

The Witness: Not that I remember, your Honor.

The Court: Were you with Mr. Sweeney all the time?

The Witness: He was in the same place, he was in the [291] dock, but I don't remember very close to me.

The Court: Your conversation concerning getting good wire then was with Mr. Grinstein?

The Witness: Yes, sir.

The Court: And his conversation was with the man on the boat?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Now, that was the 5th of August. When did you next have any contact after the 5th of August with Dulien? A. The 7th.

Mr. Dasteel: Pardon me, Mr. Bunn.

Mr. Bunn: I mean, anybody at Dulien's place?

Mr. Dasteel: A representative?

Mr. Bunn: Some person. Unless I say Mr. Dulien, when I say "Dulien" I mean Dulien's outfit.

The Witness: The 7th of August, 1946.

Mr. Bunn: May I have document No. 25, please?

(The document referred to was passed to counsel.)

The Court: These are all for identification, so you can refer to them as Exhibit 25 for identification.

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): What contact did you have with anybody at Dulien's on the 7th of August?

A. I went to Mr. Grinstein's office and [292] required——

Q. Alone, or with somebody else?

A. With Mr. Rendon—and required from him confirmation of our statement. That means that I will take the best wire from the pile, then remove 300 tons of wire, and then we will renegotiate the wire. I want to have something in writing on that.

Q. Did you then get anything in writing?

A. Yes, one letter from Mr. Grinstein.

Q. I show the witness document No. 25——

Mr. Dasteel: What date?

Q. (By Mr. Bunn): ——and ask you, Mr. Londono, when you received that letter?

The Court: It is dated August 7th.

The Witness: The 7th of August.

Q. (By Mr. Bunn): Was it handed to you?

A. Yes, it was handed to me by Mr. Grinstein in his office in Mr. Rendon's presence.

Q. Did you see him sign it?

A. Yes, I saw him.

Q. Did you hear him dictate it?                      A. Yes.

Q. Now, is this the document, except for the blue pencil number 25 and the purple ink notation, "Defendant Citizens Bank's [293] Exhibit A, P. S. Noon," and the penciled notations on the bottom?

A. Yes.

Q. Is that the letter?                      A. It is.

(Testimony of J. B. Londono.)

Mr. Bunn: We offer that as Plaintiff's Exhibit 25.

The Court: Admitted.

Mr. Laven: Pardon me, your Honor. May we see that before your Honor rules?

The Court: Very well. Let me look at it first.

(The document referred to was passed to counsel.)

(The document, heretofore marked Plaintiff's Exhibit 25 for identification, was received in evidence.)

Q. (By Mr. Bunn): Now, do you remember what time of day that was that you received from Mr. Grinstein's hands that letter?

A. No, I don't remember what time.

Q. Have you told us what you remember of the conversation that took place at the time of the delivery of that letter—Withdraw that.

What conversation did take place?

The Court: I thought he has already related that.

Mr. Bunn: I thought he just said Mr. Grinstein gave him the letter.

The Court: No, he related the conversation. He said he [294] went there and wanted confirmation in writing.

Q. (By Mr. Bunn): Did you have any further contact later that day with anybody at Dulien's place?

A. No.



(Testimony of J. B. Londono.)

Q. What did you do with that letter after you got it?      A. I kept it.

Q. You kept it?      A. Yes. [295]

\* \* \*

Q. Mr. Londono, you have testified that on July 31 for the first time you saw as identified for you some of the barbed wire, that you saw it on the Moore-McCormack dock?      A. Yes.

Q. Now, I am asking you whether or not you at any time gave any instructions to anybody after your observance of that wire on the 31st about the movement of that wire?      A. Yes.

Q. To whom did you give such instructions?

A. I instructed Mr. Sweeney to ship all good wire from that particular lot of wire, move it to Moore-McCormack Lines.

Q. You mean to pick out the good?

A. Pick out the less bad and more usable and ship it to Cartagena, Colombia.

Q. Did you give any instructions about what to do with the other of that portion that was at Moore-McCormack's?

Mr. Dasteel: Just a moment. He hasn't said the date that he gave that particular instruction.

The Court: He has not been asked. [296]

Q. (By Mr. Bunn): When did you give that instruction to Mr. Sweeney?

A. At the time we went to the dock, the 31st of July.

Q. Did you likewise give him any instructions

(Testimony of J. B. Londono.)

about what was to have been done with the portion that was not good?

A. I asked him to refuse that. [297]

\* \* \*

Mr. Bunn: I am about to show the witness the check which I showed to counsel, which is not on my list of exhibits.

Q. I show you, sir, check No. 127, dated July 31, 1946, for \$54,535, appearing to be payable to the Citizens Bank, and ask you if that is your signature on that check? A. Yes, it is.

Q. And when did you sign it?

A. The 31st of July.

Q. To whom did you deliver it?

A. To Mr. Schroeder in the bank.

Q. And what does it represent?

A. It represented the payment of the balance between the amount of \$214,000 paid for the wire to Dulien and the money I got out of the bank, \$160,000, that I received from Columbia.

Q. And you actually had borrowed this money from the [298] bank? A. From the bank, yes.

Q. And the bank had put that in your bank account? A. Yes.

Q. You then gave the foreign department a check back for that amount? A. Yes, sir.

Mr. Bunn: We offer that as Plaintiff's Exhibit 37.

The Court: Admitted.

(Testimony of J. B. Londono.)

(The document referred to was marked Plaintiff's Exhibit No. 37 and received in evidence.)

Mr. Diether: I thought 37 was the barbed wire samples.

The Court: No, No. 36 is the barbed wire samples.

Q. (By Mr. Bunn): Now, Mr. Londono, between August 7, 1946, and August 10, 1946, did you do anything about the barbed wire?

A. In particular, I don't remember. I remember well that after the 7th, or the 9th, when the wire was finished unloaded, I was trying to sell the wire to people here in Los Angeles that required to buy the wire, but nothing in particular those two days.

Q. What, if anything, in regard to the wire happened on the 10th of August?

A. The 10th, it was Saturday. Yes, I went to the bank and—— [299]

Q. Accompanied by whom, if anyone?

A. I was alone.

Q. Whom did you see at the bank?

A. I saw Mr. Moran, Mr. Powers, and I told Mr. Powers—I inquired of Mr. Schroeder but he was out on vacation and I talked to Mr. Powers—and reported to him the transaction, the bad quality of the wire, and I wanted the bank's help.

Mr. Powers suggested I see Mr. Emshoff——

Q. Was he in the foreign department at the bank? A. Foreign department of the bank.



(Testimony of J. B. Londono.)

Now I say I was with Mr. Hector Silva Herrera, a Colombian lawyer.

Mr. Hubert Morrow: We can't hear.

Mr. Bunn: He said, I was with Mr. Hector Silva Herrera, a Colombian lawyer.

The Witness: Yes. And we saw Mr. Emshoff, who suggested to me I see Mr. Fosvett, that Mr. Emshoff and Mr. Herrera and me went down to Mr. Fosvett's office.

Q. (By Mr. Bunn): On what floor of the bank?

A. First floor of the bank, main floor.

Mr. Herrera, who speaks English all right, explained, told Mr. Fosvett about my transaction, my wire transaction, explained to him the fact that the wire was very bad because [300] he saw the wire in Long Beach the day before, or several days before, and he mentioned to Mr. Fosvett the fact that that wire it was bought by Dulien from the government for \$28 per ton and he used the word "scandal," if the wire was good the government sold it for \$28.

Mr. Fosvett listened and promised to give me any help possible.

Mr. Diether: I didn't get the first part of his answer, that this Colombian lawyer had seen the wire.

The Court: The day before.

The Witness: The day before or several days before. He went with me several times to the dock.

Mr. Diether: When you went to the Harbor?

The Witness: Yes, several times.

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Proceed, if there was any more conversation with Mr. Fosvett.

A. I can't remember more.

Q. Do you remember where you went from the bank on that Saturday morning, on August 10th?

A. Yes, I talked to Mr. Moran in his place about the condition of the wire, and Mr. Moran suggests for me to use engineers to inspect the wire, to determine the quality, percentage of the galvanized wire, black wire, rusty wire and usable wire. [301]

Then we made an appointment with Mr. Moran to see Mr. Moran at the Hotel Clark the same day after the bank closed, about 12:00 o'clock, and he called Mr. Koppel in my presence and asked for an appointment for the same afternoon at the dock in order to inspect, to start the inspection of the wire, and Mr. Koppel approved, agreed, to meet us.

Then I left the bank at that time. It was about 11:00 o'clock. Mr. Moran come to the Hotel Clark between 12:00 o'clock and 1:00 o'clock, and with Mr. Rendon in his car we went to Long Beach, Pier 1-A, and on the way we had lunch. Then we met Mr. Koppel about 2:00 o'clock in Long Beach.

Q. Did you come to my office that day at all?

A. When I left the bank and before going to the hotel I had the suggestion to see Mr. Bunn, and I went to Mr. Bunn's office and I report to him my general situation, I explained what happened.

Q. Was that the first time that you had seen me?

A. Yes, it was Saturday, the 10th.

Q. Then that afternoon what did you do?

(Testimony of J. B. Londono.)

A. About 2:00 o'clock we met Mr. Koppel at the dock.

Q. Was Mr. Bunn with you?

A. No. And Mr. Moran in English explained, told Mr. Koppel what I want, that he means to inspect the wire and make report about the percentage of the galvanized wire, the black wire, the rusty wire, the good wire, the usable wire [302] and the unusable wire too.

And Mr. Koppel agreed to start immediately to make the inspection. Then we went back to the hotel and nothing more Saturday happened.

Q. That was Saturday, August 10th?

A. Yes.

Q. Between August 10th and August 21st, generally speaking, what did you do in regard to the wire?

A. I have tried to sell the wire to people from Mexico, from Brazil, from Argentina, that knew that I had this wire, called me at the hotel, called Mr. Rendon's office and asked me for the price, then every day I take people down there to the dock and show the wire, they see the wire but I have not one offer, nobody wanted to take the wire because it was too bad.

In particular, I remember on the 12th of August I saw in the pier, Pier 1-A in Long Beach, one Mr. Swanson from Toplis & Harding, and he was inspecting the wire because Koppel, Mr. Edwin Koppel, recommended to him to make the inspection.



(Testimony of J. B. Londono.)

Mr. Diether: If your Honor please, may the portion of his answer which said that they didn't take the wire because it was too bad, be stricken as a conclusion of the witness?

The Court: No. The motion is denied. [303]

Q. (By Mr. Bunn): You say you saw Mr. Swanson? A. Swanson, yes.

Q. Inspecting the wire?

A. Yes, inspecting the wire.

Q. Go ahead.

A. I myself told Mr. Swanson that I was the owner of the wire and I explained that I wanted very complete report about the quality, and he offered to me to make the report and send it to maybe Mattoon & Company. I gave my address to him.

Q. That is the 12th?

A. It was the 12th, Mr. Bunn.

Q. Now is there anything else that you can tell us that you did about the wire but try to sell it between then and the 21st?

A. Not in particular, Mr. Bunn.

Q. Now going back to the 7th of August, on which date this morning you said Mr. Grinstein accompanied you to Pier A—— A. Yes.

Q. ——and you said this morning that you saw good wire being taken from the boat to cars for Gonzalez & Blanco—— A. Yes.

Q. ——on that same occasion, did you see any selection being made from the piles of wire which were already on the dock as distinguished from the

(Testimony of J. B. Londono.)

wire that was on the boat being taken directly to the cars for Gonzalez & Blanco?

Mr. Hubert Morrow: That was the 5th, I believe. Am I wrong?

The Witness: The 5th.

\* \* \*

Mr. Laven: The government would like to interpose an objection to this line of testimony because there is nothing in the complaint or in any issue relative to the selection of the wire or any claim that there is any damages that have resulted by reason of permitting Gonzalez & Blanco to select, whereas Mr. Londono was not permitted to select. It is not in issue. Therefore it is not material, and we object to it on that ground.

The Court: It is part of the surrounding circumstances. It is permissible. [305]

\* \* \*

Q. On the 5th of August, when you saw good wire being taken from the boat to cars for Gonzalez & Blanco, did you see any selection being made from the piles of wire on the dock?

A. I saw people taking wire from the piles for Gonzalez & Blanco.

The Court: Did you see any wire unloaded from the boat while you were there?

The Witness: Yes.

The Court: What would they do with the wire

(Testimony of J. B. Londono.)

that came out of the hold, they would put it in Gonzalez & Blanco's pile or in Dulien's pile or was there somebody standing around talking about, shall we give them this one or that one, or what happened?

The Witness (Through Interpreter): No. I saw the wire being unloaded all over the pier.

The Court: I understood him to say that they were taking wire direct from the boat to cars for Gonzalez & Blanco.

The Witness: Yes, your Honor.

The Court: Did they stop any place on the way or was there somebody directing what wire was to go to Gonzalez & Blanco, or did the stevedore just haul it out of the hold and take it and put it in the pile?

The Witness (Through Interpreter): He didn't know who was [306] in charge of the distribution of the wire, but he saw some wire going from the boat to the cars.

The Court: Did he see a man on the boat or on the dock directing the distribution?

The Witness (Through Interpreter): There were some people indicating where the merchandise was to be placed.

The Court: Did he know who they were?

The Witness: No.

Q. (By Mr. Bunn): Now, up to the 21st of August, did there occur—the effort you made from August 10th to the 21st resulted in no sales by you here, is that right?      A. Yes, that is right.



(Testimony of J. B. Londono.)

Q. Did anything occur particularly on August 21st about this wire?

A. Not in particular that I remember.

Q. Did you at any time observe wire being taken out of the pile on the pier marked "Dulien" to cars for Gonzalez & Blanco?

A. About the 20th of August.

Q. What occurred?

A. I went to the dock, as all days, trying to show the wire to people, trying to sell the wire, and I saw people taking the best wire from all piles and I asked one gentleman what happened, and he say, he answered me that he is [307] working for Gonzalez & Blanco, and I asked him, "Why are you taking wire from all piles," and then he answered me, he had the right to have the wire from all piles.

I was surprised, and the same day or the next day I reported to you this fact.

Q. Did you hear any portion of a conversation in my office on the day you reported that to me?

A. I remember that you called Matson Navigation Company.

Q. You can't tell what they told me.

A. No, I would say that you talked to them. You called Mr. Banning in Matson Navigation Company.

Q. You heard me do that?

A. Yes, of course. You told him that you are my lawyer, that I just come from the dock and I saw people from Gonzalez & Blanco taking wire

(Testimony of J. B. Londono.)

from all piles in the dock, and after that you told me that Mr. Banning answered that he will——

Mr. O'Malley: Just a moment.

Mr. Bunn: You have answered. [308]

\* \* \*

Q. (By Mr. Bunn): Then you left my office?

A. That is right.

Q. Then when did you next go back to the dock?

A. Practically every day after.

Mr. Diether: What day was that?

Mr. Dasteel: The 21st?

Mr. Bunn: He said that was either the 20th or—the same day as the 20th or the next day, in his language.

Q. Now, did anything occur about this barbed wire on the 22nd or the 23rd?

A. On the 23rd I remember I had taken you to the Long Beach pier to show the wire with Mr. Rendon in his car and you saw the wire.

Q. What did you see being done, if anything, then about the wire?

A. I saw people selecting the wire for Gonzalez & Blanco.

The Court: From all piles?

The Witness: All piles. Then we left the dock and stopped at Koppel's.

Mr. Bunn: Pardon me.

Q. Before you leave the dock, do you know the name of any employee of Gonzalez & Blanco whom you there met at that time? [309]

(Testimony of J. B. Londono.)

A. I think the name is Mr. Carter, I think, but I don't remember.

Q. From the dock you went where?

A. Mr. Carter, or Mr. Partridge.

Q. You don't remember, I take it, for sure?

A. No.

Q. You say we went where then?

A. Went to Koppel's office in Wilmington.

Q. And what transpired at Koppel's office? What occurred at Koppel's office?

A. I asked Mr. Koppel to try to make report of the quality of the wire, and during our conversation—I can't remember the complete conversation—he asked me the documents used on this transaction. Then I show him. I had in my pocket document that I was thinking was a bill of lading, and I showed Mr. Koppel, and I said, "This is the document."

Q. What document did you show him?

A. I showed the bill of freight, but at that time I didn't know it was bill of freight. Mr. Koppel saw the paper and said, "This isn't a bill of lading, this is a bill of freight."

Then I handed him the document I have had like a bill of lading and he said, "No, this is a bill of freight, a big difference between bill of lading and bill of freight." It was the first time I saw or I knew the fact about the document I [310] have.

Then we left Koppel's office and the next day in the morning, the 24th of August, I went to Mr. Sweeney's office and I show him the document I



(Testimony of J. B. Londono.)

called before the bill of lading, and asked him if he had another document from the bank, and he said no, he said the only document we have——

Mr. Diether: Just a moment.

Mr. O'Malley: I think the conversation with Mr. Sweeney is hearsay as to the bank.

The Court: Yes, it is hearsay.

Q. (By Mr. Bunn): You showed Mr. Sweeney the document?

A. The document, and asked him——

Q. You can't tell what Mr. Sweeney said to you.

A. I see.

Q. I will withdraw that statement. I think he can testify to the conversation when the conversation itself, not the truth of the statements made therein, is the matter in issue. He is telling of his acquisition of knowledge.

Mr. O'Malley: He has already testified to that.

The Court: Do you object?

Mr. Diether: Yes.

The Court: The objection is overruled.

Mr. Bunn: Would you read him the last question?

The Court: He was telling the conversation with Mr. [311] Sweeney.

Q. (By Mr. Bunn): Go ahead and tell the conversation with Mr. Sweeney.

Mr. Diether: Are you allowing this for the true facts or merely that he had the conversation?

The Court: That he had the conversation.

(Testimony of J. B. Londono.)

Mr. Diether: In other words, it is not offered to prove——

Mr. Bunn: It is not offered to prove the truth of what Mr. Sweeney told him, but to prove the fact of the telling.

The Court: To prove that Mr. Sweeney told him that?

Mr. Bunn: Yes, sir. Whether true or false, is another question.

The Court: You were telling the conversation with Mr. Sweeney.

The Witness: I asked him if he had another document from the bank, and he say no, the only document he had was this document. And I say Mr. Sweeney what Mr. Koppel say the day before, in other words, that it is not bill of lading, it is a bill of freight.

Then I went to your office, Mr. Bunn's office, and reported that Mr. Sweeney told me not any other document had been delivered by the bank to Mattoon & Company. Then as you remember, Mr. Bunn, we went to the bank. [312]

Q. (By Mr. Bunn): Who is "we"?

A. You and I went into the bank and had a conference with many officers of the bank, president, Mr. Fosvett, Mr. Emshoff, Mr. O'Neil.

Q. On that same day did we first talk with all the defendants or just one person?

A. The first day we talked to all officers.

The Court: Who did you first talk to when you went to the bank, Mr. Schroeder?

(Testimony of J. B. Londono.)

The Witness: I beg your pardon?

The Court: When you and Mr. Bunn went to the bank that day, who did you first talk to?

The Witness: Mr. Fosvett. Mr. Schroeder was on vacation.

The Court: Mr. Fosvett?

The Witness: Mr. Fosvett. Mr. Schroeder was on vacation.

The Court: What did you tell Mr. Fosvett?

Q. (By Mr. Bunn): What was said between you and Mr. Fosvett?

A. You take part in the conversation. I don't tell nothing to Mr. Fosvett.

Q. I beg your pardon?

A. I say nothing to Mr. Fosvett. You tell him.

The Court: What did Mr. Bunn say?

The Witness: Mr. Bunn explained to Mr. Fosvett and the [313] other officers of the bank what happened.

The Court: What did he tell them?

Q. (By Mr. Bunn): You have to say what you heard me say.

The Court: What words did he use?

The Witness: Mr. Bunn told that the barbed wire, it was very bad barbed wire, it was all very rusty, and in particular the bank paying against a bill of freight instead of a bill of lading. And Mr. Fosvett answered that he know nothing about it because he was not in charge of the foreign department and promised to Mr. Bunn to call Mr. Schroeder in Oregon—Mr. Schroeder was on vaca-



(Testimony of J. B. Londono.)

tion—and I can't remember the words, the discussion, that happened that day. But in fact, in essence, that was the conversation.

Q. (By Mr. Bunn): Then did you confer with other officers of the bank?

A. Yes, and the fact that I signed a loan from the bank.

Q. That you had what?

A. I had a loan from the bank and I shipped the wire to South America and I had not money to pay to the bank and I asked the permission to ship the wire.

Q. From whom did you ask that, whose permission did you ask? [314]

A. The bank's permission, Mr. Fosvett and the president of the bank—I don't know the name—and Mr. Emshoff who was present too.

Q. Who else was present, if you remember?

A. Mr. Bunn, Mr. O'Neil, the lawyer of the bank.

Q. All right. On that occasion then you asked their permission to do what?

A. To release to ship the wire to South America with the payment of \$27 per ton for the wire. There on the first shipment I made to South America I paid to the bank \$27 per ton.

Mr. Diether: Was this in the conversation, or what?

The Witness: In the conversation we agreed to pay the bank \$27 per ton on the wire I was shipping.

Q. (By Mr. Bunn): Did the bank give you the

(Testimony of J. B. Londono.)

permission you asked to ship the wire to South America?      A. Yes.

Q. Did they give it to you on that same day?

A. Yes, but the next time I know as a fact that you obtained from the bank——

Mr. Diether: Just a moment. I object to that as calling for a conclusion of the witness, what he obtained.

The Court: Yes. [315]

Q. (By Mr. Bunn): You got the bank's permission, you say?

A. Yes, to ship the wire with the payment of \$27 per ton.

Q. Then did you thereafter pay \$27 per ton?

A. (Through interpreter): I made the payment of \$27 for the first shipment. That was made at \$27 per ton. But the next shipment the bank permit me——

Mr. Diether: Just a moment. I object to the witness volunteering.

Q. (By Mr. Bunn): Did you pay \$27 per ton release amount on the second shipment?

A. No.

Q. Why not?

A. Because the bank permitted me to ship the wire without payment.

Mr. Diether: May that go out as a conclusion of the witness?

The Court: Yes, that is a conclusion. I think we had better go back into the bank and visit around a while and find out who he talked to.

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Who handled the shipping documents on which the shipments to South America were made? [316] A. Mattoon & Company.

Q. Did Mattoon & Company make the second shipment? A. Yes.

Q. And you did not make a payment to the bank on the second shipment? A. No.

Q. Did Mattoon & Company handle the later shipments of the wire to South America?

A. Yes.

Q. Did you make payments to the bank of \$27 per ton or any amount on those later shipments?

A. No.

Q. Now in this conference in which you said that in your presence—— A. Mr. Bunn?

Q. Yes.

A. I received the documents from the bank on the second and third shipments.

Q. What do you mean, you received the documents?

A. Mattoon & Company made the shipment and delivered the documents to the bank and the bank delivered me the documents without payment. I don't take the document from Mattoon & Company and send it to Colombia, I take it from the bank, the bank delivered me the documents without payment.

The Court: Did you talk to anybody there at that time? [317]

The Witness: Yes.



(Testimony of J. B. Londono.)

The Court: When you got the documents?

The Witness: Yes.

The Court: Who did you talk to?

The Witness: Mr. Powers delivered me the documents.

The Court: Did you say anything, or did he say anything about shipping it?

The Witness: No.

The Court: Did you say anything about not paying \$27 per ton?

The Witness: No, Mr. Bunn said that he obtained from the bank permission.

The Court: Mr. Bunn advised you that he obtained the permission?

The Witness: Yes.

The Court: Very well.

Q. (By Mr. Bunn): Now in that conference with the several officers of the bank in which the president of the bank was there, you had said——

Mr. Diether: What day is this?

Q. (By Mr. Bunn): Did you state the date?

The Court: It was about August 24 or 25.

The Witness: About August 24. The first conference was [318] on the 24th. It was Saturday, I remember.

Q. (By Mr. Bunn): You said a while ago that the bank was told by me in your presence that the bank had paid on a freight bill.

The Court: And not a bill of lading. He has testified to that.

Mr. Bunn: Yes, sir.

(Testimony of J. B. Londono.)

Q. Now did any one of those officers in the bank then and there reply to that particular statement?

Mr. Diether: Made by you?

Mr. Bunn: Yes, in his presence.

The Witness: No, Mr. Fosvett told you that he will call Mr. Schroeder because Mr. Schroeder was on vacation and they know nothing about it.

The Court: Did you later see Mr. Schroeder that day?

The Witness: No, Mr. Schroeder was on vacation.

The Court: I mean Mr. Fosvett. In other words, did Fosvett call Schroeder and you talk to him after that?

The Witness: No, not that I remember, your Honor.

Q. (By Mr. Bunn): You mean you didn't talk to him again or that he didn't call?

Mr. Diether: He didn't talk to him again.

The Court: He said he did not remember. [319]

Q. (By Mr. Bunn): Now that is August 24th. you say? A. Yes, sir.

Q. Now did you make any further inquiry—just answer yes or no—about the delivery of a bill of lading?

Mr. Diether: I object to that as indefinite and uncertain.

Mr. Bunn: I want him to answer yes or no, and then we will see.

Mr. Diether: Inquired from whom?

Mr. Dasteel: By whom?

(Testimony of J. B. Londono.)

Mr. Bunn: I think an effort on his part to find out would be competent and material regardless.

The Court: The objection is overruled. Read the question.

(The question referred to was read by the reporter as follows: "Q. Now did you make any further inquiry—just answer yes or no—about the delivery of a bill of lading?"')

Mr. Diether: The point I wish to observe is delivered to whom, delivered to the bank, delivered to Matson Company, delivered to Mattoon or whom?

Mr. Bunn: To anybody.

Mr. Diether: It is indefinite and uncertain in that [320] particular.

The Court: Overruled.

Do you understand the question?

The Witness: Yes.

No.

Q. (By Mr. Bunn): Did you talk to Mr. Moran?      A. No.

Q. About whether he received the bill of lading?

A. Oh, that was on the 10th.

Q. On the 10th of what?

A. I saw Mr. Moran on the 10th.

Q. The 10th of August?

A. Yes. The first time I saw Mr. Moran was the 10th of August. And I saw Mr. Moran on the 24th, that morning.

Q. Well, now, on the 10th, was there any conver-



(Testimony of J. B. Londono.)

sation between you and Mr. Moran about a bill of lading? A. No, not any conversation.

Q. All right.

A. The only conversation I had with Mr. Moran about the documents, it was the 24th, in the morning, when I show him the freight bill, bill of freight, and asked him if he paid the credit, the draft, to Dulien against that document.

Q. Was anybody with you then besides Mr. Moran?

A. Mr. Bunn, Mr. Thomas Bunn. [321]

Q. Now tell us what conversation took place.

A. Mr. Moran told me after he saw the paper that he paid against other document, a larger piece of paper. He used that word.

Mr. Hubert Morrow: The witness is using his hands to show a piece of paper how large?

The Witness: Yes. (Indicating.) He used the words and expression, "larger piece of paper."

Mr. Diether: It was larger than the bill of freight?

The Witness: Yes.

Mr. Hubert Morrow: Indicating about 15 inches in length, I take it.

The Court: I do not know. It did not look to me like it was 15 inches.

Mr. Hubert Morrow: Or 20. He said a larger piece of paper.

The Court: He said a larger piece of paper than the freight bill.

(Testimony of J. B. Londono.)

The Witness: Yes, your Honor. [322]

\* \* \*

Q. Now when did you next thereafter see Mr. Moran? Do you remember seeing him again?

A. Yes, I remember, and I have my recollection in my record, the date. It was about the 29th of August.

Q. Where was it?

A. At the corner of Spring Street and Fourth Street.

Q. What time of day or night was it?

A. It was in the afternoon, I saw him, and I say to him——

Q. Was there anybody else present in the range of hearing?

A. No. But I had many troubles because of the bad quality of the wire, that I cannot sleep.

Mr. Dasteel: If your Honor please, I move that that be stricken.

The Witness: And he say——

Mr. Dasteel: Did he say he said that?

The Court: That is what he said, I say to him I had many troubles on account of the bad quality of the wire and I cannot sleep. That is the witness' words. [323]

The Witness: And he answered me, he also can't sleep because he made a mistake in the bank and everybody in the bank is against him and nobody in the bank wants to take the responsibility of the mistake, of the error.

(Testimony of J. B. Londono.)

Then he told me that the bank now is against me because the bank know that I have a lawyer. The first time I tried to have—he told me—the first time I tried to have the help in the bank, but now the bank is against me because I have a lawyer.

Q. (By Mr. Bunn): Go ahead, if there is anything more in the conversation.

A. In essence, that was all the conversation. It was in Spanish.

\* \* \*

Q. Was there anything said about South America in that conversation?

A. I remember, Mr. Bunn, that Mr. Moran asked me about [324] the condition of jobs, the work, in South America.

Q. On that same occasion?

A. On that same occasion.

The Court: The condition of what?

The Witness: The condition of the work, and I told him——

\* \* \*

A. I answered him that in South America there is very good opportunity for people like him that speak English and Spanish, and that is true.

Q. That you say was on what date?

A. About the 29th of August.

Q. Now when did you next have any contact—no, did you make any other inquiry thereafter about the delivery or not of a bill of lading to the bank?

A. No.

Q. Did you go to Dulien's office?



(Testimony of J. B. Londono.)

A. No. At that time?

Q. Well, later. Did you later go to Dulien's office? [325]

\* \* \*

The Witness: I never inquired from anybody the delivery of the bill of lading. I was trying to locate the bill of [326] lading.

The Court: Did you go to Dulien's office?

The Witness: Yes, I went to Dulien's office the fourth day of September.

Q. (By Mr. Bunn): Now before the 4th of September, did you go anywhere else looking for a bill of lading?

A. About that day I was at Wilmington—

Mr. Diether: What day?

The Witness: About the 4th of September.

The Court: You were where?

The Witness: Wilmington. During that day between the 20th of August and the 4th of September I was trying to locate the bill of lading.

Q. (By Mr. Bunn): Where did you go?

A. I went to Matson Navigation office in Wilmington, with Mr. Sweeney of Mattoon & Company, trying to locate the original bill of lading.

Q. Do you know with whom you talked there?

A. I do not know the name of the man I talked with. I talked to somebody there and asked him about the documents regarding this shipment, and after he tried to find it, he told me that they have not the original bill of lading, and suggested to me that maybe the cashier put it away when the [327]

(Testimony of J. B. Londono.)

freight was paid. But I could not see the cashier that was in the office.

But he show to Mr. Sweeney and I another document regarding this transaction and I looked at the body of the document, supposed to be a carbon copy of the bill of lading, and no exception is made on the body of the document I saw there.

Q. Did you make any comment on that?

Mr. Diether: To whom?

Mr. Bunn: To the man that showed it to him.

The Witness: I asked him why on this shipment, rusty wire, Matson issued a bill of lading, clean bill of lading, or clean document, and he say that maybe the shipper in Honolulu made a bond, a warranty, in order to protect Matson.

Mr. Bunn: Made bond to guarantee, did he say?

The Interpreter: Warranty.

Mr. Diether: Made bond or warranty?

The Interpreter: That perhaps that agents for Matson in Honolulu have made a bond in guaranty, or warranty.

The Court: To Matson?

The Interpreter: To Matson.

Mr. John Morrow: If the Court please, we object to the question and answer, at least the answer as the witness has stated it. There is no foundation shown that this man he was talking to was connected with Matson or sufficiently connected with Matson to be acting within the scope of his authority [328] in any such statement he might have made. I move to strike the answer.

(Testimony of J. B. Londono.)

The Court: I think you failed to object to the foundation, or to the lack of foundation when counsel was asking him whom he talked to. The evidence shows that it was at Matson. It appeared to be somebody that Matson held out as some person to do business with. The motion to strike is denied.

\* \* \*

Q. (By Mr. Bunn): Now when did you next see Mr. Grinstein? [329]

\* \* \*

(The question referred to was read by the reporter as follows: "Q. Now, when did you next see Mr. Grinstein?")

The Witness: The next time I saw Mr. Grinstein it was at Dulien's office the 4th of September, accompanied with Mr. Bunn.

Q. (By Mr. Bunn): Morning or afternoon?

A. The morning.

Q. Tell us the conversation that took place.

A. Mr. Bunn told Mr. Grinstein that I refused the wire because it is very rusty, very bad wire, and I am not going to take the wire.

Mr. Grinstein say, "Mr. Londono, you have the wire and we have the money."

Then Mr. Bunn explained all the facts about the different kind of wire, galvanized, black wire, rusty wire, unusable wire, and put the fact that the bank pay the credit against bill of freight instead of a bill of lading.



(Testimony of J. B. Londono.)

Mr. Grinstein called Mr. Stanley at his office——

\* \* \*

Q. Will you proceed with the conversation in Dulien's office?

A. Mr. Stanley take part in the conversation between you and Mr. Grinstein in my presence and told Mr. Stanley——

Q. Who told Mr. Stanley?

A. Mr. Grinstein told Mr. Stanley that you say, in other words, that the bank pay the draft against bill of freight instead of bill of lading, and Mr. Stanley admitted, [332] saying that they left the bill of lading at Matson's office and presented to the bank——

Q. Where?

A. At Matson's office and presented to the bank the bill of freight instead of the bill of lading.

Q. Did he say which Matson office?

A. He mentioned Wilmington.

Mr. Diether: Now, if the Court please, I move to strike the answer of the witness upon the ground that it is hearsay testimony and not binding upon the bank. No officer or employee of the bank was present at that time.

The Court: It will be the same ruling as before.

What I have in mind is this: There is a possibility that perhaps there was just as much of a duty on Dulien to present a bill of lading to the bank as there was for the bank to receive it or to ask for it.

(Testimony of J. B. Londono.)

Mr. Diether: I am only asking for a ruling on behalf of the defendant bank.

The Court: I understand that. The motion is denied, subject to a further motion to strike.

Mr. Diether: Do I understand your Honor to indicate that I am to make that motion at the close of this witness' testimony or at any appropriate time during the course of the trial?

The Court: In view of the understanding among all counsel [333] at the beginning of the trial, it would seem to me that the most appropriate time to gather your motions to strike together would be at the conclusion of the plaintiff's case because undoubtedly throughout the trial there will be many things admitted in evidence which, under the understanding we had at the beginning of the trial, one or the other of the parties may wish to strike.

Mr. Diether: And that I take it, your Honor, means——

The Court: And for the further reason that at the conclusion of the plaintiff's case it will be the plaintiff's case and I will have everything to take into consideration then which might either make it admissible or not admissible.

Mr. Diether: And we understand our arrangements, as I understand it, that our motions to strike may apply to any or all of the testimony which might be presented by the plaintiff that we feel is not applicable or admissible as to our particular client.

The Court: I do not want to say anything more

(Testimony of J. B. Londono.)

about the understanding that was had at the beginning of the evidence because it is clear. It ought to be in the record, and it is in the record. If I say anything more now we will then all be confused. Now, we have only one incident to remember. If I say anything about it then we will have two.

\* \* \*

Mr. Bunn: Mr. Morrow has just asked for a repeating by the reporter of Mr. Londono's last answer, I believe.

The Court: I would appreciate that. I thought the witness said that Stanley said he left the bill of lading at Matson's office.

The Witness: Yes.

The Court: Proceed.

Q. (By Mr. Bunn): Go ahead.

A. Then Mr. Grinstein admonished Mr. Stanley because he was talking that way and say that that matter must be handled by his lawyer and stopped Mr. Stanley's conversation.

Mr. Dasteel: If your Honor please, I move to strike the phrase "admonished." I think the witness should limit himself to exactly what was said.

The Court: The word "admonished" will be stricken. Otherwise the answer will stand.

Q. (By Mr. Bunn): Mr. Londono, you said, I believe, that Mr. Stanley said they had left the bill of lading at Matson's office. Did he say who "they" were?

A. He used the word, his men.



(Testimony of J. B. Londono.)

The Interpreter: He said that he used Dulien's men. [335]

\* \* \*

Q. (By Mr. Bunn): Now is that all of the conversation as you remember it on that occasion?

A. That is all I remember, Mr. Bunn.

Q. Mr. Londono, have you ever received an original bill of lading on the barbed wire which you purchased from Dulien? A. No.

Q. Have you ever seen a bill of lading, an original bill of lading, on that purchase?

A. I saw the bill of lading last week in your office shown by Mr.—

The Court: For the first time?

The Witness: For the first time. I do not know his name.

Q. (By Mr. Bunn): Mr. Morrow?

A. Yes, and the other lawyer.

Q. From San Francisco, Mr. Aldwell?

A. Yes.

Q. In other words, for the first time you saw it in my office when it was shown by them?

A. Yes, sir. [336]

Q. Did you yourself ever have any conversation with Mr. Banning of Matson Navigation Company about the wire, you yourself, not your lawyer?

A. At the time I was at Matson delivering a letter for you—

\* \* \*

Q. You answer yes or no first and then I shall pursue the matter. A. Yes.

Q. When was it? A. It was—

(Testimony of J. B. Londono.)

Q. Well, where was it?

A. It was at Matson's office in Los Angeles, main office.

Q. What was the occasion of your being there?

A. I was delivering Mr. Banning a letter from Mr. Thomas Bunn.

Q. A letter from me to Mr. Banning?

A. Yes.

Q. And you then had a conversation with Mr. Banning?      A. Yes. [337]

Q. Do you know what, approximately what date that was?

A. It was about the 10th of September.

Q. Was anybody else present in the range of hearing?      A. No, not that I can remember.

Q. What was said in that conversation between you and Mr. Banning?

A. I told Mr. Banning that I was in very bad condition, I was losing a lot of money because of the transaction of the wire, and in particular because I had not the right to select the wire and because Matson gave to Gonzalez & Blanco the right to select the wire of all piles, and Mr. Banning apologized, excused, saying he was the——(speaking Spanish).

The Interpreter: He took upon himself to order.

The Witness: Yes, about that matter. In other words, Gonzalez & Blanco have the right to select the wire. But he added to me that he was acting for superior officer from War Assets Administration.

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): You say War Assets?

A. War Assets Administration.

Q. Go ahead, if there was anything more.

A. He was very sorry because of that.

Q. Is that all? A. Yes, that is all.

Q. Did you yourself, not your lawyer, have any personal [338] conversation with anybody?

Mr. Laven: Mr. Bunn, I don't believe you set the date of that.

The Court: About September 10th.

Q. (By Mr. Bunn): Did you yourself personally have any conversation with anybody from the War Assets Administration or the War Shipping Administration? Just answer yes or no.

A. Yes.

May I correct something, your Honor?

The Court: He says he wants to correct an answer.

The Witness: When I said before War Assets Administration I mean War Shipping Administration.

The Court: Did you hear his answer? (Assent.)

Q. (By Mr. Bunn): Now answer my question. Did you have personal conversation with anybody from the office of the War Shipping Administration? A. Yes.

Q. Where? A. In San Francisco.

Q. Approximately when?

A. September, 1946.

Q. You do not know the date?



(Testimony of J. B. Londono.)

A. I can't remember the date. [339]

The Court: Was it after your conversation with Mr. Banning?

The Witness: Yes, your Honor.

Q. (By Mr. Bunn): With whom did you talk?

A. I told Mr. Ball, the lawyer for War Shipping Administration in San Francisco——

Q. B-a-l-l? A. B-a-l-l.

Mr. Bunn: That is right, is it not, Mr. Morrow?

Mr. John Morrow: I believe so.

Q. (By Mr. Bunn): What was the occasion of that conversation? How did you happen to do that?

A. I report to my lawyer that I had planned to go to San Francisco and my lawyer asked me to see Mr. Ball and inquire about the order to permit Gonzalez & Blanco to segregate, to take the best wire, in this transaction.

Q. Was this in Mr. Ball's office in San Francisco?

A. Yes, Mr. Ball's office in San Francisco.

Q. Was there anybody else present?

A. Yes, another person was present. I don't know, one or two.

Q. In the range of hearing of the conversation?

The Court: Did they participate in the conversation, [340] or were they just stenographers?

The Witness: I can't say that.

Q. (By Mr. Bunn): You say you cannot say that?

A. Somebody introduced me to Mr. Ball, but I

(Testimony of J. B. Londono.)

don't know if he take place in the conversation or not.

Q. You had a conversation with Mr. Ball?

A. Yes.

Q. What was said in that conversation by you and by him? What did you say to Mr. Ball about the wire?

A. I told him that I was the buyer of the barbed wire, one part of the barbed wire, shipped it by White Squall, and I reported to him that I am losing money because the wire it was very bad wire, very rusty wire, and because he ordered to Matson in Los Angeles to permit Gonzalez & Blanco to take the best wire from all piles of wire. [341]

\* \* \*

Q. (By Mr. Bunn): You may answer. Go ahead and tell what Mr. Ball said.

The Court: Where was this, in the office of the War Shipping Administration?

The Witness: Yes, your Honor.

The Court: Did it have a sign on the door?

The Witness: A sign on the door?

The Court: War Shipping Administration?

The Witness: (Pause.)

The Court: How did you know you were in the War Shipping Administration instead of the Emporium?

The Witness: Yes, I knew. I saw it on the door.

The Court: Very well.

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): What did Mr. Ball say to you?

A. Mr. Ball said that in fact he authorized, he ordered Matson in Los Angeles to permit Gonzalez & Blanco to select the wire because he was advised that Gonzalez & Blanco has an order bill of lading and the other consignee had not.

Q. Anything else that he said?

A. No, not in essence.

Q. You didn't get him to change his order, did you?

A. No. [342]

\* \* \*

Q. Mr. Londono, did anybody of the Citizens Bank bring to you any person, as a prospect, for the purchase of any of this wire?

Mr. Diether: That is objected to as incompetent, irrelevant and immaterial. It has no bearing on any of the issues involved in this case whether they did or did not.

Mr. Bunn: I think it is definitely material whether the bank tried to help him dispose of this wire.

The Court: I do not think so. I think that he was under an obligation, under the circumstances—perhaps the bank was too—to mitigate the damages all around. The objection is overruled. [343]

\* \* \*

The Court: You see, if I should sustain the objection which you have just made you would be holding that he did this for his own benefit, and that is



(Testimony of J. B. Londono.)

one of the issues in the case, whether or not he did it for his own benefit or for the benefit of everybody in mitigation of damages.

The objection is overruled. You can mark that down as something to make a motion to strike on, but presently it is overruled. [344]

\* \* \*

The Court: The objection to the question is overruled. Read the question again, Mr. Reporter.

(The question referred to was read by the reporter as follows: "Q. Mr. Londono, did anybody of the Citizens Bank bring to you any person, as a prospect, for the purchase of any of this wire?")

The Witness: No.

The Court: So far as you know?

Mr. Diether: He already answered. He said no. [345]

The Witness: So far as I know.

The Court: I take it that it should be limited within his knowledge. Maybe somebody came to see him and the Citizens Bank sent him and he did not know about it.

Q. (By Mr. Bunn): Do you understand the question as the court has expanded it?

The Court: He said no, so far as he knows.

Q. (By Mr. Bunn): Did Dulien, so far as you know, send any person or bring any person, I should say, to you as a prospect for the purchase of

(Testimony of J. B. Londono.)

any of this wire after you told Mr. Grinstein that you wouldn't take it?

A. Mr. Grinstein in one occasion asked me permission or authorization and a quotation, a price, and I accepted.

Q. What do you mean by "accepted"?

A. I accepted. I say to him to go ahead and try to sell the wire.

Q. Did he send anybody to you, any person?

The Court: That you know of.

Q. (By Mr. Bunn): That you know of?

A. No.

Q. Did Matson send anybody to you, so far as you know, as a prospect for the purchase of any of this wire? [346]

A. No.

\* \* \*

Mr. Bunn: I have in hand document No. 34, the original letter of September 10, written and signed by me as attorney for J. B. Londono, written to Dulien, Matson and the bank.

Mr. Diether: What number is that?

Mr. Bunn: That is No. 34.

Q. Mr. Londono, I show you that document, No. 34 for identification, and ask you if it bears your signature.

A. Yes, it is.

The Court: That document was received by you from one of the other counsel today?

Mr. Bunn: No. If your Honor please, that is the original document which bears the signatures of all parties.

The Court. Of various people. In other words,

(Testimony of J. B. Londono.)

that has been in your possession or his possession all the time?

Mr. Bunn: In my possession.

The Court: Very well.

Mr. Bunn: And I ask counsel for a stipulation that this original letter bears the words "approved and agreed to" in the lower left-hand corner, followed by the signature of Dulien Steel Products, Inc., by E. S. Grinstein, of United States Maritime Commission, Matson Navigation Company, [347] Berth Agents, by J. B. Banning, Jr., of the Citizens National Trust & Savings Bank by H. D. Ivey, President, and J. B. Londono, and that it bears my signature as the writer thereof, under which signature of mine are the words, "Attorney for J. B. Londono."

I ask that it be stipulated that that is the original document and that those signatures are genuine.

Mr. Diether: Will you also stipulate that the signature of the bank of Mr. H. D. Ivey was put on that document on September 18, 1946?

Mr. Bunn: If you tell me, sir, that that was the date it was put on, I shall so stipulate. I myself of course have no personal knowledge of the date the bank signed it as distinguished from the affixing by the other parties of their signatures.

Mr. Diether: That is my information, and I will so stipulate.

Mr. Bunn: On your statement to that effect, I will so stipulate with you.

Mr. Diether: Thank you.



(Testimony of J. B. Londono.)

The Court: It is so stipulated?

Mr. Hubert Morrow: So stipulated?

Mr. Laven: So stipulated.

Mr. Dasteel: So stipulated.

The Court: Very well. [348]

Mr. Bunn: We offer that as Plaintiff's Exhibit No. 34.

The Court: Admitted.

(The document referred to was marked Plaintiff's Exhibit No. 34 and received in evidence.)

The Court: Is this the letter you took over to Mr. Banning that day?

The Witness: Yes.

\* \* \*

The Court: Excuse me a moment, counsel. Did the stipulation include the fact that this letter was written on or about September 10? [349]

Mr. Hubert Morrow: Ours did.

Mr. Laven: The government's did.

Mr. Diether: Yes.

The Court: Because it says that it will confirm the understanding reached yesterday.

Very well.

Q. (By Mr. Bunn): Now, Mr. Londono, calling your attention to the language which the court has just read in that letter, the first two lines of the letter which say, "This letter will confirm the understanding reached yesterday," do you remember being present in any conference in the office of your at-

(Testimony of J. B. Londono.)

torney, Thomas Bunn, in which there were present any persons from the group of your opponents in this lawsuit?

A. Yes, I remember the conference that we had in your office.

Q. Where?

A. The 9th of September, in your office.

Q. In my office? A. Yes.

Q. Do you remember who was there?

A. I remember that Mr. Grinstein was there, Mr. Banning was there, Mr. O'Neil, the lawyer for the Citizens Bank, was there, you were there, Mr. Arturo Rendon, and I don't remember if Mr. Dasteel was there or not. Can you help me? [350]

\* \* \*

Mr. Bunn: The witness has stated he doesn't remember whether Mr. Dasteel was present.

Mr. Dasteel: I join with him. I don't remember either. [351]

Q. (By Mr. Bunn): Now before you signed the sale order at Dulien's office on July 12—withdraw that.

Before you went to Dulien's office on July 11th, had you made every effort in the state of California to buy barbed wire? You said you planned to go to New Orleans. Had you made effort in the state of California elsewhere to buy barbed wire?

Mr. Diether: I object to that.

Mr. Dasteel: Your Honor please, I object to that on the ground that those dates were prior to any negotiations or transactions between the plaintiff

(Testimony of J. B. Londono.)

and the defendant Dulien. We hadn't heard of him and he hadn't heard of us until July 11th, so anything he did prior to that time would be incompetent, irrelevant and immaterial.

The Court: I take it that counsel is now moving on to the phase of establishing his measure of damage. That would be the only materiality of this and the only ground upon which it could possibly be admissible.

Mr. Bunn: We have alleged non-availability, generally speaking, of barbed wire.

The Court: The objection will be overruled and the evidence will be admitted for that sole purpose.

\* \* \*

Mr. Diether: Your Honor please, I would like to add a further objection to the one that Mr. Dasteel made. I think that the question of whether or not wire was available would depend upon another date, not prior to July 11, but perhaps the date on which he took delivery, which would be on July 30 or July 31st. What happened prior to July 11th would be absolutely immaterial even on the question of damages.

The Court: I think on a matter such as that, that is, measure of damages which depends upon the availability of a commodity such as barbed wire, you cannot fix any particular moment or period of time, and this is not too remote in period of time from the date which you are claiming to prevent its admissibility.



(Testimony of J. B. Londono.)

In other words, it is not precisely what the condition was at 12:00 o'clock noon on July 31, but what the general condition was during the period of this transaction.

The objection is overruled. [353]

\* \* \*

(The question referred to was reread by the reporter as follows: "Q. Before you went to Dulien's office on July 11th, had you made every effort in the state of California to buy barbed wire? You said you planned to go to New Orleans. Had you made effort in the state of California elsewhere to buy barbed wire?")

The Witness: Yes, from May 6th until July 11. In other words, I come to California to buy barbed wire.

Q. (By Mr. Bunn): And you tried to find some?

A. Yes, from May 6 until July 11 I was looking and looking for barbed wire.

Q. Did you find any besides this coming from Honolulu on the White Squall?

A. Not in fact. [354]

Q. Did you look for barbed wire elsewhere in California after the 29th of July, 1946?

A. Yes, I was looking for good wire. [355]

\* \* \*

Q. (By Mr. Bunn): Mr. Londono, did you at any time in 1946, or since that time, maintain any business establishment in Los Angeles?

A. No.

(Testimony of J. B. Londono.)

Q. When you were here in the last six months of 1946, where did you receive your mail?

A. At the Hotel Clark, at the Colombian Consulate, at Mr. Arturo Rendon's office.

Q. Now, you remained here how long in 1946 after the 29th of July?

A. Until November, 1946.

Q. Within that time you left the city, did you on any occasion?

A. I was in San Francisco. [361]

Q. Is that the only trip out of the county that you made?

A. I was in New York in November for two days, and I was in Long Beach a hundred times.

\* \* \*

Q. Now, why did you remain in Southern California until November?

A. Because of this, because of the bad quality of the wire, because I was trying to sell the wire to mitigate the loss that I had on the wire.

Q. Where did you live while you were here?

A. At the Hotel Clark.

Q. At all times from July?

A. At all times from July until November, yes with the exception of the days I was in San Francisco and New York.

Q. Did you keep any actual record of your expenditures for your personal living expenses?

Mr. Diether: If the Court please, I observe that counsel is now trying to prove an item of special damages, for the living expenses of Mr. Londono

(Testimony of J. B. Londono.)

in California during the period of time that this wire was being disposed of. We wish to object to that line of testimony on the ground it is [362] incompetent, irrelevant and immaterial, and has no bearing on any of the causes of action against the bank; that the liability of Mr. Londono for living expenses was never within the contemplation of the parties, and, certainly, his expenses were not proximately caused by any act of the bank as alleged in the complaint.

The Court: Special damages are never in contemplation of the parties. That is what makes them special.

Mr. Diether: Well, we don't feel that we would be liable under any circumstances for these special damages because they were not proximately caused by any act of the bank which is alleged in the complaint, and we, therefore, move to strike his testimony thus far with respect to that subject, and object to any further testimony on that subject being applicable to the defendant bank.

The Court: Objection overruled. Motion denied.

Mr. Diether: May it be understood that this testimony is all subject to the same objection?

The Court: Without prejudice to a motion to strike.

Mr. John Morrow: On behalf of Matson, we join in the objection of Mr. Diether and in his motion to strike.

Mr. Laven: The government joins in the same objection.



(Testimony of J. B. Londono.)

Mr. Dasteel: And so does Dulien. It was my understanding, your Honor, that the objection of one would be deemed to be the objection of all defendants? [363]

The Court: No. You recall that you suggested that, and your stipulation was denied.

Mr. Dasteel: In that case I will have to object more frequently.

The Court: The objections are overruled.

Mr. Bunn: Miss Reporter, will you read him the question, please?

(The question was read by the reporter.)

The Witness: No.

Q. (By Mr. Bunn): Do you remember what you paid for your room at the Clark Hotel?

A. Yes.

Q. How much?

A. \$3.50 per day.

Q. How much? A. Three-fifty.

Q. Can you give us an approximation of the cost of your own meals—not your friends' or your guests'?

Mr. Diether: We object to that as too indefinite and uncertain.

Mr. Dasteel: I join in the objection.

Q. (By Mr. Bunn): You ate while you were here, didn't you? A. Yes.

Mr. Diether: That is objected to, also. [364]

Mr. Dasteel: We also object.

Mr. John Morrow: And Matson joins in the objection.

(Testimony of J. B. Londono.)

Mr. Hubert Morrow: May we have a stipulation as to this entire line?

The Court: Yes. It may be deemed that the original objections will cover the entire line.

Now, what is your question? "You ate while you were here, did you?" or "How much did your meals cost?"

Q. (By Mr. Bunn): Can you give us an approximation of what your meals cost you?

A. About \$7.00 per day.

Q. Can you give us an approximation of what your incidental expenses were, that is, the items of living expenses other than basic room rent and cost of meals?

Mr. Diether: Your Honor, I think that goes a little beyond——

The Court: That is pretty indefinite.

Mr. Diether: That is my point, your Honor.

The Court: Of course, I don't know what basic living expenses are. We start out with \$10.00 in the morning, and by night you haven't got it, and you can't tell where you spent it. I guess that is incidental.

Mr. Dasteel: Your Honor, I think if counsel would interrogate the plaintiff about what were his expenses, instead of counsel leading him on each item—— [365]

Mr. Bunn: All right.

Q. (By Mr. Bunn): What other items of living expenses did you have besides food and room rent?

A. Telegrams, stamps to write letters to my family. I wrote 182 letters in six months.

(Testimony of J. B. Londono.)

The Court: You wrote two letters?

The Witness: 182.

The Court: 182 letters?

The Witness: To my wife. And laundry, and press, and transportation, and many other things. I can't have records.

Q. (By Mr. Bunn): Do you know how much money you spent?

Mr. Diether: That is objected to as too indefinite and uncertain.

The Court: Yes, that is indefinite.

Q. (By Mr. Bunn): Can you give us an approximation——

A. I calculate——

Q. ——of what those incidentals were?

A. I think I can say that. I calculate all my expenses in that three months more or less as about \$3,000. I have no records how much I pay for food, for telegrams, for letters, for transportation. It was calculated by me, \$3,000.

Mr. Diether: I move that the answer be stricken as a conclusion of the witness and not based on any itemization of the expenses he has had.

The Court: Motion denied. That is your necessary [366] expenses? That doesn't mean going to Ciro's or——

The Witness: No, necessary expenses.

Q. (By Mr. Bunn): Mr. Londono, did you at any time by word of mouth, as distinguished from by writing, instruct the bank to deliver the bill of lading to Mattoon & Company?



(Testimony of J. B. Londono.)

A. No, not that I remember.

Q. Was there any reason why, from August the 7th, which you gave as the date of a visit—no, which is the date of a letter from Dulien to you, until September the 9th, which Mr. Dasteel said was Admission Day—why did that long a time elapse between any personal conference between you and Mr. Grinstein?

Mr. Diether: That is objected to as calling for a conclusion.

Mr. Dasteel: I join in the objection.

Mr. Bunn: It may not call for a conclusion at all. It may well be a fact.

The Court: Your question is, “Why?” That calls for a reasoning process.

Mr. Bunn: All right.

The Court: A reasoning process involves a conclusion. Therefore, it is a conclusion of the witness.

Mr. Bunn: I will withdraw it or I will submit to the adverse ruling, which is the same thing.

Q. (By Mr. Bunn): Do you know whether or not Mr. [367] Grinstein was in Los Angeles County between the 7th of August and the last part or the first week of September?

Mr. Dasteel: We object on the ground that calls for a conclusion of the witness. He might have been here for five minutes during that period.

Mr. Diether: It is also immaterial, and has no bearing on any issues involved in the case.

The Court: Overruled.

The Witness: At the times I wanted to see Mr.

(Testimony of J. B. Londono.)

Grinstein, between August the 7th and September the 4th, I was told that Mr. Grinstein was out of the city; in Honolulu at one time, I remember. In other words, I could not see Mr. Grinstein during that time, and I tried to see him.

Q. (By Mr. Bunn): Did you go to his office?

A. I don't remember.

Q. Did you telephone his office?

A. Yes, by phone. I am sure by phone.

Q. Did you talk to Mr. Stanley within that period of time yourself? A. Not in person.

The Court: On the phone?

The Witness: On the phone, yes. I was informed by Mr. Stanley that Mr. Grinstein was out.

Q. (By Mr. Bunn): On what day did you first, after August 7th, see Mr. Grinstein? [368]

A. September the 4th.

Q. Now, you said you went to the Moore-McCormack dock on July 31st and saw some wire identified for you. Did you give specific instructions for the shipment of that wire on the 31st?

A. Yes. I instructed Mattoon & Company don't ship that wire in that condition. I instructed him to segregate, to separate the best wire from the very rusty wire.

Q. Do you know what was done with that wire?

A. Yes.

Q. What was done with it?

A. Mattoon proceed to segregate. I know that because they send me bill, charging bill, and after

(Testimony of J. B. Londono.)

that I was reported that 112 tons were shipped, and one balance of very, very rusty wire was left on the dock.

Q. At Moore-McCormack?

A. At Moore-McCormack, yes.

Mr. Diether: May I have the last part of the answer read, please?

(The answer was read by the reporter.)

Q. (By Mr. Bunn): Do you know how long that balance of rusty wire you last mentioned remained on the dock at Moore-McCormack? A. Yes.

Q. How long? [369]

A. It was from July the 31st until—1946, until the summer of 1947, about May, 1947.

Q. We call that the spring out here.

A. The spring.

Mr. Dasteel: Your Honor please, I would like to object to counsel, in interrogating the witness, in effect, and the answers, referring to the rusty and rotten wire. There is no evidence yet in this case that the wire was rusty, and it is a matter of degree, but the witness emphatically at all times when he has an opportunity refers to it as bad wire and rusty wire.

The Court: He has testified it was rusty.

Mr. Dasteel: That is just his opinion.

The Court: What is that?

Mr. Dasteel: That is his opinion.

The Court: Objection overruled.

Mr. Dasteel: His statement. There is no proof.

The Court: Objection overruled.



(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Did you come back to Los Angeles in 1947? A. Yes, sir.

Q. Did you while here see any of the wire that had come over on the White Squall under your order from Dulien?

Mr. Diether: When was that?

Mr. Bunn: In 1947. [370]

The Witness: Yes.

The Court: When did you come back in 1947?

The Witness: It was between—I arrived in Los Angeles on March the 29th.

The Court: March 29th, 1947?

The Witness: Yes, your Honor. I remember because it was my birthday, and I was previously reported by Mr. Bunn by that——

Mr. Diether: I object to the witness volunteering.

Q. (By Mr. Bunn): What did you do, if anything, in regard to any of the barbed wire——

A. Oh, yes.

Q. ——in the spring of 1947?

A. I went to the Moore-McCormack line, Moore-McCormack dock, to inspect some wire that Mr. Sweeney from Mattoon & Company told me may be from the same lot of wire moving from Long Beach Pier A to Moore-McCormack line on July 31st. We went on to the pier of the Moore-McCormack, and I identified the barbed wire.

Mr. Sweeney of Mattoon reported to me that the dock charge would be about \$700 which amount would be forgiven from Moore-McCormack if we

(Testimony of J. B. Londono.)

proceed to ship wire to any place, then, because the freight would be the same as the dock charges. I accepted to ship this wire to South America. And on the other side—— [371]

The Court: How much was it?

The Witness: It was 477 coils, rolls, of barbed wire; 100-pound coils.

Q. (By Mr. Bunn): And you then made arrangements and did ship it?

A. Yes; and shipment was made by Mattoon & Company to Cartegena, under the name of Londono Hermanos, Limited.

Q. Did you see the attorney for Dulien in the spring of 1947, our friend, Mr. Dasteel, here?

A. Yes.

Q. Where did you see him?

A. It was at some place when Mr. Gonzalez, Mr. Thomas Gonzalez from Gonzalez & Blanco, had some barbed wire supposed to be from the lot that I sold him 1946, and that wire, it was there because Mr. Gonzalez refused to take because that wire will not resist——

The Court: No. The question is, where did you see Mr. Dasteel? At Gonzalez's office?

The Witness: No, I saw on the place we saw the wire. I taken to the place on the occasion I saw Mr. Dasteel.

The Court: Well, where was it? Some warehouse or some place?

The Witness: Yes.

The Court: Gonzalez & Blanco's warehouse?

(Testimony of J. B. Londono.)

The Witness: Gonzalez & Blanco—No, your Honor. [372] One place where Gonzalez & Blanco had the wire to pickle it.

The Court: To pickle?

The Witness: To pickle.

The Court: And that is where you saw Mr. Dasteel?

The Witness: Yes.

The Court: When was that?

The Witness: It was during April, 1947, about April, yes.

Mr. Diether: Did you say it was in February?

The Witness: April.

The Court: April, 1947?

The Witness: At that time, with Mr. Dasteel present, Mr. Gonzalez refused to take this wire at the price of \$51 per ton because don't resist the pickling process, and he proposed——

Q. (By Mr. Bunn): In Mr. Dasteel's presence?

A. ——in Mr. Dasteel's presence to accept this wire at the price of \$4.50 per ton, and we accepted it because the wire, it was so bad, no other buyer.

Q. Did Mr. Dasteel join in that——

A. Yes.

Q. ——approval of \$4.50?                      A. Yes. [373]

\* \* \*

Mr. Diether: May I inquire of counsel if that is the wire, which the witness is now testifying about, the 104 tons of wire which Mr. Bunn wrote to all the parties concerning?

Mr. Bunn: Yes, I think so.



(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Was there any person present at that gathering or assembly at the location of that wire from the Citizens Bank?

A. I don't remember.

Mr. Bunn: Gentlemen, may I ask for a stipulation that 104 tons of it were by agreement of all of you except Matson, and without objection by Matson, sold to Gonzalez & Blanco for \$4.50 per ton?

Mr. Diether: I understand if that was done, it was all done pursuant to the arrangements set forth in the letter of September 10th, which you offered in evidence yesterday, being Exhibit No.—

The Court: Whatever it is.

Mr. Diether: —without prejudice to any of the rights of the parties.

Mr. Bunn: No. 34, I think it is.

The Court: Yes, that is right. No. 34. [374]

\* \* \*

Mr. Dasteel: I don't know why it would be necessary to stipulate to that. We all agreed it was to mitigate the damages, without waiving the rights of the defendants, and that he could proceed. I don't see any necessity for the stipulation.

\* \* \*

Q. (By Mr. Bunn): Mr. Londono, how much wire did you actually receive from the Dulien shipment?

Mr. Diether: I object to that as no proper foundation laid. It doesn't show he has any knowledge from any circumstance that has been related so

(Testimony of J. B. Londono.)

far as to how he could estimate or determine how much wire he received.

Mr. Laven: The government joins in the objection. That is not the best evidence.

Mr. Diether: I add that to the objection.

Mr. Bunn: May he answer the question "Yes" or "No," and then may I develop it? I asked him if he knows.

The Court: No, you said: How much did you receive? [375]

Mr. Bunn: All right.

Q. (By Mr. Bunn): Do you know how much you received? A. Yes, by the records.

Q. How much did you receive?

Mr. Diether: I object to that.

Mr. Laven: I object as not the best evidence.

Mr. John Morrow: The same objection by Matson.

The Court: What do you mean by "records"?

The Witness: Shipping documents, and records of sales to Gonzalez & Blanco.

Mr. Diether: May I have the answer read?

(The answer was read by the reporter.)

Mr. Dasteel: That is not what he received.

Mr. Hubert Morrow: There might be an ambiguity there as to the word "received."

The Court: Yes, that is in my mind.

Q. (By Mr. Bunn): Mr. Londono, how much of the wire that was unloaded from the White Squall did you or your agents make disposition of?

(Testimony of J. B. Londono.)

Mr. Diether: That is objected to.

Mr. Dasteel: That is objected to.

Mr. John Morrow: That calls for a conclusion. He wasn't there all the time, as he has testified.

Mr. Diether: And not the best evidence.

Mr. Laven: It is not how much he disposed of, your Honor. [376] It is how much he actually received. Therefore, it would not be the best evidence.

Mr. Dasteel: Further than that, your Honor, it is my contention that it is how much wire was available for him on the dock that was unloaded from the White Squall, that was there.

The Court: That is your case?

Mr. Dasteel: Yes.

Mr. Laven: That is also the government's case, your Honor.

The Court: That is your case, then. Will you read the question again, please?

(The question was read by the reporter.)

The Court: The witness has not shown by his testimony a sufficient foundation to indicate that he knows how much wire was unloaded from the White Squall. The objection is sustained on that ground only, and overruled as to all the other grounds.

Q. (By Mr. Bunn): Mr. Londono, do you know, of your own knowledge, how much wire, barbed wire, was unloaded from the White Squall at Pier A at Long Beach?           A. No.

The Court: How much wire did you ship or sell, one or the other—total?



(Testimony of J. B. Londono.)

Mr. Diether: That is objected to, your Honor. That is [377] not material; only insofar as it relates to the question of mitigation of damages. If he is trying to ascertain the witness'—if counsel is trying to elicit testimony relative to the shortage, if any, that this witness sustained, how much he shipped is not material. It is how much he received from Matson Navigation Company or Matson Navigation Company's agent. Read the question again please.

(The question by the court was read by the reporter.)

The Court: —which had come on the White Squall?

Mr. Dasteel: May I make an inquiry? There is a point involved that is being overlooked. There was so much wire available. We claim 2,000 tons, or 2,300 tons on the dock. There was 2,000 tons that Londono, the plaintiff, was entitled to remove or ship. There were 300 tons that Dulien would be allowed to remove. Now, the question is not how much he removed. He may have shipped 1100 tons or 1200 tons, and may have left a lot on the dock. The question is, how much was available to him, and the shipping documents show there was 2,300 tons all together, of which there was available for this plaintiff 2,000 tons.

The Court: What shipping documents?

Mr. Dasteel: The freight bills, the bills of lading, the invoices, many documents.

(Testimony of J. B. Londono.)

The Court: The objection is overruled.

Mr. Bunn: You may answer. [378]

The Court: Read the question again, please.

(The question referred to was read as follows: "Q. How much wire did you ship or sell, one or the other,—total?")

The Court: —which came on the White Squall?

(The question was interpreted.)

Mr. Diether: Your Honor, may we have a question which he could answer "Yes" or "No"? Then I would like, if your Honor permits him to answer and if he does know how much he shipped, then I would like permission to examine the witness on voir dire as to his knowledge.

The Court: He has testified he knows the total by a question asked by Mr. Bunn, and I don't think we need to go on voir dire at this time. You can cross-examine him when you have the opportunity. Now, do you remember the question?

The Witness: Yes, your Honor.

The Court: All right.

The Witness: 1,919 tons. In other words, it was 2,000 tons less 81 tons.

Q. (By Mr. Bunn): Now, Mr. Londono, did you ship any wire in the last six months of 1946, or the first six months of 1947, other than the wire that came on the White Squall? A. No.

The Court: Did you sell any? [379]

The Witness: No.

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Did you sell any other than that? A. No.

Q. Who handled the actual shipping arrangements for that barbed wire that was shipped?

A. Mattoon & Company.

Q. All of them? A. All.

Q. Now, did you receive any—answer “Yes” or “No”—any bills from Mattoon & Company for expenses in connection with segregation of the wire?

A. Yes.

Q. Did you pay them? A. Yes.

Mr. Dasteel: Your Honor please, I move that that answer be stricken. I object to the question, too, for the reason that no matter what kind of wire the plaintiff received, he probably would have employed somebody to segregate it, the black from the galvanized, and some that was a little weather-beaten, some which had dust on it, and that would not be a proper charge.

The Court: Red dust?

Mr. Dasteel: Red dust, yes, your Honor, which is prevalent in Honolulu, we understand.

The Court: The objection is overruled. That may be a [380] factor to be taken into consideration in the event any judgment is entitled to be given to the plaintiff.

Q. (By Mr. Bunn): Did you pay all the bills you received from Mattoon & Company?

A. Yes.

The Court: Are they in the list here marked for identification?

Mr. Bunn: No, sir; because they are in the sub-



(Testimony of J. B. Londono.)

poenaed records from Mattoon, and they will have to be testified to by Mattoon men. And before that time we will go through them and have a list.

The Court: All right.

Mr. Hubert Morrow: Why couldn't they be introduced subject to objection, and save a lot of time?

Mr. Bunn: I am perfectly willing to put it in now by him, but I assumed you would object, and that he himself wouldn't know as much about it as Mr. Sweeney would.

Mr. Hubert Morrow: I don't say that as a criticism, but simply making the suggestion.

Mr. Bunn: I may say that the incidental expenses for hauling and segregation, and the several items set up on page——

The Court: Do you have the bills for those that he paid?

Mr. Bunn: Not in one bill, no, sir. They are in the [381] subpoenaed files.

The Court: Well, in various files?

Mr. Bunn: I have a summary of them, signed by Mattoon & Company, but they are not the original bill. The original bills Mr. Sweeney himself has to testify to.

The Court: Are they here?

Mr. Bunn: They are supposedly here. They were brought in under subpoena.

Mr. Diether: Your Honor please——

Mr. Bunn: They are in a stack of subpoenaed documents.

Mr. Diether: If your Honor please, these bills are merely Mattoon's bills to Mr. Londono. I have

(Testimony of J. B. Londono.)

seen them. Mr. Londono didn't pay these expenses directly. He got bills from other persons. So Mr. Swéney is in no position to do that.

The Court: Are you going to put counsel to the bother of bringing in Mr. Koppel, or Mr. This-one and Mr. That-one, and, finally, if you go to the ridiculous extreme, you would have to go down and get hold of the man on the dock and say to him, "Did you do the work this day? Did you get paid? How did you get paid? Was it in money? Yes. Was it in United States money? Yes. Are you sure it wasn't counterfeit"?

Mr. Diether: Your Honor, I don't have that line of objection in mind, but from looking at the bills you can't [382] tell where the work was performed, or what particular kind of service was being rendered, other than it was segregation of wire. You don't know whether it was at the Moore-McCormack dock or Pier A, whether it applied to the 300 tons of wire which eventually went to Dulien, or what. You have no knowledge of the circumstances in connection with what these items of expense relate to. Now, if somebody can explain that——

The Court: You mean your position is that this plaintiff here would be obligated to pay the segregation of the wire for Dulien?

Mr. Diether: Absolutely not.

The Court: I see.

Mr. Diether: But it may be included in that is what I say. It may be included in items of expense that are shown in those bills.

(Testimony of J. B. Londono.)

The Court: Is there some contention that Mattoon & Company acted for Dulien also?

Mr. Diether: No. Koppel Brothers were also acting as I understand it, for Gonzalez & Blanco in getting their shipment off the dock. I understood they did some of the segregation work. But I think that before those bills could be introduced in evidence we would need some explanation. Of course, the bank takes the position they are not in any way material, as far as the bank's cause of action is concerned, [383] for the simple reason they are not proximately caused by any acts of the bank. Of course, not in the contemplation of the parties, and all the other objections I have.

Mr. Hubert Morrow: May I make a suggestion to save time? Why couldn't this witness be testifying subject to all objections that he spent a certain amount covering certain bills, total, and then if Mattoon & Company are to be here, they can testify as to the bills, and under the general rule as to documents kept in the ordinary course of business, they might be introduced in evidence.

The Court: I would think so.

Mr. Hubert Morrow: And that is subject to cross-examination.

The Court: Yes. In personal injury cases in the Superior Court time after time they will bring in a garage mechanic who will testify that he did the work and got the money, or they will produce an X-ray bill, and say, "Yes, I paid it. Here is the receipted bill."



(Testimony of J. B. Londono.)

I think if counsel insists on the objections, they are valid objections if there isn't any foundation laid to show that this work was actually done on that barbed wire on such-and-such a particular dock. But this witness certainly can testify as to what he paid.

Mr. Bunn: Your Honor please, I anticipated these objections. That is the reason I merely asked if he paid the bills [384] from Mattoon, and I intended to bring Mr. Sweeney in and have him testify.

The Court: How much did you pay Mattoon? That is subject to all the objections that were made.

Q. (By Mr. Bunn): If you remember the exact amounts? A. It is in the complaint.

Q. Again I ask you, did you pay whatever Mattoon bills you got? A. Yes.

The Court: Now, to refresh your recollection here, how much was it? How much did you allege?

Mr. Bunn: We alleged \$6,540.66, of which, however, one item was incurred which has not been paid yet.

The Court: One item of what?

Mr. Bunn: One item of the specifications in that allegation, the last item on pages 7 and 8, of the complaint.

The Court: That is in paragraph XI?

Mr. Bunn: Yes, sir.

The Court: That would be:

(Testimony of J. B. Londono.)

Dock Storage.....	\$2,837.45
Inspection by Los Angeles Cargo Appraisers .....	38.85
Segregation and Supervision.....	48.00
Extra drayage on account of poor condition of Wire.....	130.50
Sorting Labor on account of poor condition of Wire.....	2,734.86
Extra charges by Mattoon & Co., Inc.....	750.00
The last one of \$750 has not yet been paid?	

Mr. Bunn: Has not yet been paid.

The Witness: Because I had not a bill for it.

The Court: You had not?

The Witness: I had not a bill from Mattoon.

The Interpreter: It has not been billed by Mattoon & Company as yet.

The Court: As to all of the items I have just read, did you pay them to Mattoon & Company? That is, \$2,837.34, and the inspection by Los Angeles Cargo Appraisers, \$39.85, and all these different items?

The Witness: I paid it to Mattoon.

The Court: You paid them all to Mattoon & Company?

The Witness: Yes.

The Court: And then Mattoon & Company paid the dock storage and the drayage and cartage?

The Witness: Yes, your Honor.

The Court: So that you have paid Mattoon & Company the items that are listed in paragraph XI of the complaint \$6,540.66 less \$750?

(Testimony of J. B. Londono.)

The Witness: Yes, your Honor.

Mr. Bunn: All of which will be testified to in as much [386] detail as counsel require by Mr. Sweeney.

The Court: If you haven't been billed by Mattoon & Company for \$750, how do you know you owe it to them? They told you?

The Witness: Yes, Mr. Sweeney told me it is in his books.

The Court: I see.

Q. (By Mr. Bunn): Now, Mr. Londono, do you remember by what date the entire shipment of barbed wire on the White Squall had been unloaded?

\* \* \*

The Witness (Through interpreter): To my knowledge, it was up to the 9th of August, 1946.

The Court: Does he mean about the 9th of August, as far as he knows?

The Interpreter: Up to the 9th, he says.

The Court: Well, ask him if he means about the 9th?

The Witness: About the 9th, yes, sir.

Q. (By Mr. Bunn): Now, in the meantime, between the 31st of July and the 9th of August, while wire was being [387] unloaded, was any wire also being removed, to your knowledge, from the dock in those nine days? A. Yes.

The Court: He has already testified to that. He said he was down there with Mr. Grinstein and saw them.



(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): All right. On how many days did you yourself see wire being moved direct from the boat to cars rather than from the boat to the floor of the dock?

A. It was several days. I am sure for two days.

Q. Now, after August 9th, and after all the wire had been unloaded, did you see any movements on the dock?

A. Yes.

Q. What did you observe?

A. I observed people from Gonzalez & Blanco selecting wire from all piles—— (through interpreter) taking them away in cars, railroad cars and trucks.

Mr. Dasteel: Your Honor please, I am a little disturbed about making objections, but it seems to me these questions have already been asked and answered yesterday. Mr. Bunn went through the entire thing, and it is repetition.

Mr. Bunn: On each one of these there is something that appears in my notes that requires clarification. That is the reason that I asked.

The Court: I remember he testified yesterday about unloading it on the one occasion. Now, he is asking if there [388] was another one, as I understand this evidence, and he said he saw it on two times.

Mr. Dasteel: But he also asked him, if your Honor please, if that was all he saw and if that was all he knew about them, and the witness answered "Yes."

(Testimony of J. B. Londono.)

The Court: He asked if that was all he saw at the time.

Q. (By Mr. Bunn): Now, Mr. Londono, will you describe the wire, as you saw it, any or all of it, on the dock at Long Beach in the month of August, 1946.

The Court: In what part of the month?

Mr. Bunn: I am speaking of the quality and condition of the wire.

Mr. Diether: He hasn't set any particular time.

Mr. Laven: It is indefinite.

Mr. Bunn: All right. I will change it.

Q. (By Mr. Bunn): Do you remember on what date after August 9th you were at the dock next,—any particular day      A. I said all days.

Q. I believe you said you went down there after you talked to me on the 10th?      A. Yes.

Q. In the afternoon,—Saturday?

A. Yes, but I was there almost all days after the 31st of July. [389]

Q. You said almost all days?

The Court: Almost every day.

Mr. Bunn: That means every day. All right.

Q. (By Mr. Bunn): Directing your attention to your observation of the wire on Saturday afternoon, August 10, what did you observe about the quality and condition of the wire?

A. I observed all kinds of wire; small quantities of galvanized wire, looked like white; a larger quantities of black wire; and still larger quantities of rusty wire.

(Testimony of J. B. Londono.)

Mr. Diether: Of what?

The Witness: Rusty wire.

The Court: More quantities of rusty wire.

The Witness: That I could not see if it was galvanized or not, because the color it was black or yellow. In other words, I can say that I calculate about 20 per cent galvanized wire, about 20 per cent rusty wire usable, and 60 per cent very rusty wire unusable. That I remember that I was able——

The Court: So that is your estimate of the various lots you saw on the pier from time to time?

The Witness: Yes, your Honor. And I was there several times to broke many pieces of the wire with my hands, because it was so rusty.

Q. (By Mr. Bunn): Can you approximate the percentage of [390] good wire, if any, which you shipped from Los Angeles to South America?

Mr. Diether: That is objected to, your Honor please. This witness has already testified that this shipping was done by Mattoon & Company. He didn't personally actually see any wire except that which was on the dock.

Mr. Bunn: Oh, he didn't say that at all. He said Mattoon & Company handled the shipping. He didn't say he didn't.

Mr. Hubert Morrow: We also want to object to the word "good," as to what counsel means by that.

Mr. Bunn: All right. I will reframe it.

The Court: All right.



(Testimony of J. B. Londono.)

Mr. Hubert Morrow: You have to be very specific on that.

Q. (By Mr. Bunn): Mr. Londono, did you cause to be shipped to South America any wire which was altogether in compliance with the representations——

The Court: Objection sustained. Mr. Londono, do you know how much galvanized wire you shipped?

The Witness: About 20 per cent, your Honor.

The Court: Well, how many tons?

The Witness: 200 tons.

The Court: 200 tons of galvanized wire. And how much [391] other wire did you ship?

The Witness: I shipped 1,000 tons.

The Court: 1,000 tons? That is 1,000 tons?

The Witness: 1,050 tons.

The Court: 1,050 tons? Of black wire?

The Witness: Of black wire.

The Court: What was the condition of the 1,050 tons of black wire when you shipped it?

The Witness: About 75 per cent rusty, and 25 per cent in good condition including the black and galvanized.

The Court: About 25 per cent in good condition, and 75 per cent rusty?

The Witness: Rusty.

The Court: Of the 75 per cent rusty, was all of it usable, or was it badly rusted?

The Witness: I can't say, your Honor, because

(Testimony of J. B. Londono.)

I don't know whether it was used in Colombia or not.

Mr. Diether: I move to strike the last few answers of the witness relative to the amount of the wire shipped on the ground there is no showing he has any personal knowledge of the wire shipped or the condition of it at the time it was shipped.

Mr. John Morrow: The shipping documents would be the best evidence.

The Court: You mean the bills of lading? [392]

Mr. Bunn: We would be happy to introduce them if counsel will not object. We will be happy to introduce the bills of lading on the shipments to South America.

The Court: Maybe that would be the best way to get at it, to break it down here. I don't see how you are going to be able to frame any shotgun question in connection with this.

The Witness: May I correct this, your Honor?

The Court: Your motion to strike is denied. He wants to correct something.

The Witness: We call good wire rusty wire.

The Court: How is that?

The Witness: When I say "good wire," I don't say that it was not rusty.

(Through interpreter): It was slightly rusted, but it is good as usable. The appearance of the wire that was shipped was all rusty.

The Court: All the wire that was shipped was rusty?

The Witness (Through interpreter): And it

(Testimony of J. B. Londono.)

was noted by the steamship companies in making the documents.

The Court: And your testimony is that about 20 per cent of it was good when you saw it here?

The Witness: Yes.

Mr. Diether: 25 per cent, he said.

The Court: 25 per cent. [393]

Mr. Diether: That 25 per cent was good and 75 per cent was not good.

The Court: The 25 per cent was good rusty wire?

The Witness: Good wire, very good for sale, good usable, but——(through interpreter) was dirty.

The Court: And 75 per cent was rusty, but not badly rusty?

The Witness: Yes, 75 per cent badly rusty.

The Court: Badly rusted?

The Witness: 75 per cent badly rusty.

The Court: Did you ship any pickled wire?

The Witness: No.

Mr. Diether: What kind of wire, your Honor?

The Court: Pickled wire.

The Witness: No.

The Court: Now, maybe we can go faster by moving a little slower right now, and by having a short recess.

(A short recess was taken.)



No. 12886

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United States  
Court of Appeals  
for the Ninth Circuit.

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CITIZENS NATIONAL TRUST & SAVINGS  
BANK OF LOS ANGELES, Appellant,  
vs.

J. B. LONDONO, DULIEN STEEL PRODUCTS,  
INC., OF CALIFORNIA and DULIEN  
STEEL PRODUCTS, INC., Appellees.

And

DULIEN STEEL PRODUCTS OF CALIFOR-  
NIA and DULIEN STEEL PRODUCTS,  
INC., Appellants,  
vs.

J. B. LONDONO and CITIZENS NATIONAL  
TRUST & SAVINGS BANK OF LOS  
ANGELES, Appellees.

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Transcript of Record  
In Eight Volumes

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Volume II  
(Pages 501 to 942)

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FILED

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Southern District of California,  
Central Division.

NOV 29 1951



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**Appeal from the United States District Court for the  
Southern District of California,  
Central Division.**





(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Mr. Londono, how much wire in all did you ship to South America?

Mr. Diether: I object to that as already having been asked and answered.

The Court: I had understood that, although that was not included in my question. He was just asking how much he shipped. Objection overruled.

The Witness: 1,051 tons.

The Court: Where did the other 200 tons go, or the 199 tons? You said you shipped 200 tons of galvanized and 1,050 tons of rusty wire.

The Witness: Your Honor, I told you I shipped 1,000 tons——

The Court: 1,050 tons.

The Witness: 1,050 tons. 200 tons of it was galvanized, and 800 of it black.

The Court: Oh, I misunderstood you.

Mr. Dasteel: I have the same record here.

Mr. Diether: I do, too.

The Court: In other words, your total was 1,050 tons?

The Witness: 1,051 tons.

The Court: Of which 200 was galvanized?

The Witness: More or less.

The Court: You mean it was more or less galvanized?

The Witness: 20 per cent more or less. I can't say exactly how many coils galvanized, and it was not segregated. It was my calculations and my observations.

(Testimony of J. B. Londono.)

Mr. Diether: What did you say? That was your calculation?

The Witness: Yes. It was not segregated. It was my observation and my calculations.

Mr. Hubert Morrow: I understand that approximately 200 [395] tons of it was galvanized and 851 tons of it black?

The Witness: Yes.

\* \* \*

Q. (By Mr. Bunn): Mr. Londono, did you ever willingly accept any of this wire?

Mr. Diether: That is objected to.

Mr. John Morrow: That is objected to.

Mr. Diether: That is one of the questions to be decided by this court.

The Court: Objection sustained. That calls for a reasoning process.

Mr. Bunn: Of course, "accept" calls for a reasoning process.

Mr. Dasteel: And "willingly."

Q. (By Mr. Bunn): All right. Did you ever accept any of this wire?

Mr. Diether: That is objected to, your Honor please. The evidence will show that. It is calling for the conclusion of the witness. His own acts and conduct will show what he [396] did with respect to the wire.

The Court: Sustained.

Mr. John Morrow: The same objection.

The Court: Sustained.



(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Mr. Londono, why did you exercise dominion over any of this wire?

Mr. Diether: That is objected to, if your Honor please. "Why" calls for a conclusion. His own acts and conduct will show.

The Court: It calls for a conclusion and it has been asked and answered. He testified this morning he did these things to mitigate his damages.

\* \* \*

Q. (By Mr. Bunn): All right. Mr. Londono, when you delivered the letter of credit to Mr. Grinstein on Saturday, July——

The Court: Letter of credit?

Mr. Bunn: Yes, sir; the letter of credit. [397]

The Court: Oh, yes. All right.

Q. (By Mr. Bunn): When you delivered the letter of credit to Mr. Grinstein on July 27th, did Mr. Grinstein read it? A. Yes.

Q. In your presence?

A. Yes, I saw him read it; at least, he looked into the letter of credit in front of me.

Q. In addition to writings, did you on July the 26th or July the 27th verbally tell Mr. Schroeder to have Mattoon make the shipments for you?

A. Yes.

Mr. Diether: That——

Mr. Bunn: That is not the same question I asked earlier this morning. I thought you would think it was.

Q. (By Mr. Bunn): When you signed the note

(Testimony of J. B. Londono.)

for \$54,535 to the bank on July 31st, did you then have any question in your mind about the bank having received a bill of lading?

Mr. Diether: That is objected to as incompetent, irrelevant and immaterial. It doesn't make any difference whether he did or he did not. At that particular time we had already advanced the money for a loan to him of \$54,535, and he already had the documents.

Mr. Bunn: Had what documents?

Mr. Diether: The documents. [398]

Mr. Bunn: You mean the letter of credit?

Mr. Diether: The letter of credit, yes.

The Court: The objection is overruled. Answer the question.

Mr. Dasteel: We join in the objection, your Honor.

Mr. Diether: May I have the question again, please?

Mr. Hubert Morrow: Will you read the question?

(The question was read by the reporter.)

The Witness: No.

Mr. Diether: Your Honor please, may I add to my objection?

The Court: Yes.

Mr. Diether: The man had already received consideration for the note, because we had already advanced it to him, made a loan to him, in order that he might purchase a letter of credit for \$214,000, and his note had nothing whatsoever to do with

(Testimony of J. B. Londono.)

whether or not we had complied with the letter of credit or anything in connection with that transaction. The note was a separate transaction entirely, namely, a loan.

The Court: He was just fixing the time.

Mr. Diether: No. As I understand it, he is trying to establish some facts with relation to the cancellation of this note.

Mr. Bunn: I will be glad to tell you what I am trying to do. [399]

Mr. Diether: Let's hear it.

Mr. Bunn: I am trying to show this so that later you will not say that Mr. Londono with full knowledge still went in and signed a note for \$54,000. I want you to know if he had any question in his mind.

The Court: The objection is overruled. The question has been answered.

Mr. Diether: His answer was "No"?

The Court: His answer was "No."

I would like to ask a question on that, so everybody can get set to make an objection.

Mr. Hubert Morrow: What chances do we have of having it sustained, your Honor?

The Court: I don't know. If it is good, I will sustain it. I don't recall the particular date here at the moment when he said he went down and talked to Mr. Grinstein and he called Mr. Stanley in.

Mr. Diether: September the 4th.

The Court: September 4th, 1946.

Prior to September 4th, 1946, did you at any time



(Testimony of J. B. Londono.)

know that the bank had not received any bill of lading?

The Witness: No.

The Court: I am saying September 4th because I think that might be the date, but there were several days in there. [400]

The Witness: Not as a fact, but I thought—— (through interpreter) I thought or supposed when Mr. Koppel——

The Court: Let me fix another date here. "August 24th I asked Mr. Sweeney if he had any document." So I will reframe my question, and strike the question and the answer. Did you prior to August 24th know——

The Witness: No, sir.

The Court: ——that the bank had not received any bill of lading?

The Witness: No, your Honor.

Mr. Diether: Of course, that assumes a fact not in evidence, your Honor. It has not been proven yet the bank didn't receive a bill of lading.

The Court: It has been testified to, that they have not.

Mr. Dasteel: That was his understanding, your Honor please.

Mr. Diether: That is what somebody told him.

Mr. Dasteel: He may have believed it, although it may not have been a fact.

The Court: All right. Did you at all times from and after July 28th——

Mr. Diether: That is Sunday your Honor.

(Testimony of J. B. Londono.)

The Court: I know it is.

Mr. Diether: Oh, sorry. [401]

The Court: Or, let me say: Did you at all times on July 29th and after until August 24th believe that the bank had received the bill of lading, as called for in your application for letter of credit?

The Witness: Yes.

Mr. Hubert Morrow: Just a moment. Was there an answer to the former question?

Mr. Diether: Those were stricken.

The Court: I struck them.

Mr. Hubert Morrow: You struck them. Thank you.

Q. (By Mr. Bunn): Did you yourself participate in the agreement with Gonzalez & Blanco for the pickling of 25 tons of wire? A. Yes.

Q. Did you make the arrangements with them?

A. Yes.

Q. Why did you do that?

Mr. Diether: Mr. Bunn, that is subject to the agreement of September 10th.

Mr. Bunn: All right. I will withdraw it.

Q. (By Mr. Bunn): For what purpose did you do that?

Mr. Diether: Just a moment. That is objected to.

The Court: You withdrew the question. For what purpose did you do that?

The Witness: In order to know the quality, the inside [402] of the wire.

Q. (By Mr. Bunn): In order to what?

(Testimony of J. B. Londono.)

A. In order to know the real quality, to clean the wire and see how it is usable or not.

Mr. Diether: Will you read that last answer, please?

(The answer was read by the reporter.)

Mr. Diether: May we have the date of that understanding?

Mr. Bunn: I will now, in order to comply with Mr. Diether's request, ask for a stipulation which I understood this morning he would enter into, that on the date of September 27, 1946, in writing with Gonzalez & Blanco the agreement was made.

Mr. Diether: So stipulated.

The Court: You offer this in evidence?

Mr. Bunn: Yes, sir. I have shown it to these gentlemen.

The Court: Is it on the list?

Mr. Bunn: It is on the new list I am going to hand the clerk at noon. That has just been typed and brought to me this morning.

The Court: All right.

Mr. Bunn: Let me see what number it is on that new list.

The Court: The new list should begin with No. 38.

Mr. Bunn: Yes. I have a new secretary, too, and it [403] sometimes balls things up.

It is No. 39, dated September 27th.

Q. (By Mr. Bunn): I ask you, Mr. Londono, if that is your signature to that letter?



(Testimony of J. B. Londono.)

A. Yes, it is.

Q. And my signature? A. Yes, sir.

Q. And the signature of Gonzalez?

A. Yes. I saw him at the time.

Mr. Bunn: We offer that as Plaintiff's Exhibit 39. I have a copy of this, gentlemen, which I will hand you right now.

The Court: It will be admitted in evidence.

(The document referred to was marked Plaintiff's Exhibit 39, and was received in evidence.)

\* \* \*

Mr. Bunn: I ask for a stipulation on a letter from me bearing the same date, September 27th, to all parties defendant except the government, who wasn't then in the case, reporting on the execution of the one which has just been received.

The Court: What is that number?

Mr. Bunn: This should be "A" after the last number. [404]

Mr. Bunn: 39-A?

Mr. Bunn: Yes, 39-A, because it is a companion.

The Court: All right.

Mr. Bunn: Will you stipulate, gentlemen, that I wrote the original and that the letters were received by everybody but the government?

Mr. Diether: It was received by the bank.

Mr. Dasteel: So stipulated.

The Court: On or about the date it bears?

Mr. Bunn: Yes, your Honor.

Mr. John Morrow: So stipulated.

(Testimony of J. B. Londono.)

The Court: All right. 38-A in evidence.

Mr. Bunn: 39-A.

The Court: 39-A in evidence. I am sorry.

(The document referred to was marked Plaintiff's Exhibit 39-A, and was received in evidence.)

Mr. Bunn: Now, does that answer your question, Mr. Diether?

Mr. Diether: Yes. Thank you. Mr. Bunn, may we also have a stipulation that this agreement of September 27, 1946 relative to the pickling of the wire was all subject to the agreement of September 10th?

Mr. Bunn: Or was all in accordance with the general understanding set out in the letter of September 10th, that Londono would make every effort? [405]

The Court: All right. It seems to indicate on its face, as well as in the letter. [406]

\* \* \*

Friday, April 21, 1950—2:00 P.M.

The Court: Proceed.

J. B. LONDONO

the witness on the stand at the time of recess, being heretofore duly sworn, resumed the stand and testified further as follows:

Mr. Bunn: Now, if your Honor please, I have been handed by counsel for the bank the original \$54,535 note, which I now ask be substituted for

(Testimony of J. B. Londono.)

No. 22, the copy, which was marked yesterday and received, and ask that it include the bottom portion of the note form.

The Court: Admitted.

Mr. Bunn: On the left-hand side—no, I just ask it be included in the exhibit. Then there is attached to that original note or in the clerk's hands now a typewriting of all the payment information that has been put on that note since Mr. Londono signed the original note. Correct, Mr. Diether?

Mr. Diether: Correct.

Mr. Bunn: And which will be much more readily read by the court and counsel than will the note itself.

The Court: Let me see the original note.

Mr. Hubert Morrow: It is to become a part of Exhibit [407] 22?

Mr. Bunn: Yes, with the plaintiff asking permission to reserve its right to object to the allocation to interest of any of those payments therein shown and to offer evidence thereon, contrary to the allocations shown by the bank.

The Court: This will all go in. The other one was admitted as Exhibit 22. This probably better had go in as 22-A and 22-B.

The Clerk: The other is only marked for identification, as I understand it, Judge.

The Court: I have it here marked in evidence.

Mr. Bunn: I thought it was received in evidence.

The Clerk: When was that?

Mr. Diether: I think those are bank records and



(Testimony of J. B. Londono.)

the plaintiff ought to offer them or not.

The Court: 22 is marked in evidence.

Mr. Diether: That is what our records show was actually credited to principal and what was credited to interest.

Mr. Bunn: Well, I will not offer it and be bound by the bank's allocation of the interest. Then I will change the offer.

The Court: I think he is entitled to have it offered in the manner he is offering this, as a part of the bank's records.

Mr. Diether: We have no objection to that.

The Court: Pardon?

Mr. Bunn: Yes. We have set up now a contest on the question of the allocation of certain payments to interest.

The Court: As a part of the bank's records. I don't see how the plaintiff is bound by the allocations, with which he has had nothing to do, on the face of the document. Exhibit 22 was in evidence, wasn't it?

The Clerk: Yes.

The Court: This will be—the note will be 22-A, and the typewritten translation of the red English hieroglyphics on here will be 22-B.

Mr. Bunn: And, likewise, may I ask without prejudice to the plaintiff right to produce contrary evidence to any of the pencil notations on the bottom of that document?

The Court: You have that right. You are introducing the note, front and back?

(Testimony of J. B. Londono.)

Mr. Bunn: Under the statement that the court has made, yes.

Now, I ask that there be stipulated as to document No. 41 on the new list there——

The Court: The new list is what?

Mr. Bunn: I laid an additional sheet on your Honor's desk?

The Court: I see. All right.

Mr. Bunn: And counsel each have one—No. 41, —which [409] is a copy of a letter dated October 18th from Mr. Londono to the bank authorizing the release to Gonzalez and Blanco of \$1,000, pursuant of course, to that September 10th agreement.

The Court: You offer this in evidence?

Mr. Bunn: If Mr. Diether will stipulate that the copy may go in.

The Court: The stipulation which you request is that it was sent in the regular course of business on or about the date it bears?

Mr. Bunn: And was received by the bank.

The Court: The answer is "Yes"?

Mr. Diether: Oh, yes, your Honor.

The Court: In evidence, No. 41.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 41.)

Mr. Diether: That is October 18th, is it?

Mr. Bunn: That is October 19th.

The Court: Very well.

Mr. Bunn: I likewise ask that it be stipulated—

(Testimony of J. B. Londono.)

no, I offer the original agreement dated October 22, 1946, between Londono and Gonzalez and Blanco, a copy of which agreement has heretofore been furnished several years ago to each of my opponents. Now, if anyone has not a copy——

Mr. Laven: I haven't ever seen one. [410]

Mr. Bunn: You weren't any opponent then.

Mr. Laven: That is right.

Mr. Bunn: Oh, yes, you were, as Matson's lawyer.

Mr. Laven: I have never seen it.

Mr. Bunn: This is the agreement for the \$51 per ton. I am handing Mr. Laven a conformed copy of that agreement. Other counsel have one.

Mr. Diether: What number is that?

Mr. Bunn: That is No. 42.

The Court: It is admitted in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 42.)

Mr. Bunn: Now, attention is called to the fact that is signed by me as attorney in fact for Mr. Londono. If anyone wants me to, I can produce the original power of attorney. I take it it is not necessary.

Mr. Hubert Morrow: Not necessary so far as we are concerned.

Mr. Diether: We don't require it.

Mr. Bunn: Hearing no requirement for it, I shall not offer it.



(Testimony of J. B. Londono.)

I now offer No. 43, which is a copy of a letter from me, as Mr. Londono's counsel, dated November 29, 1946, to the bank, transmitting to the bank Gonzalez & Blanco's check for \$1,579.50, and reporting in the letter that that is the [411] payment under the agreement with Gonzalez & Blanco for what I have heretofore referred to as 25 tons of barbed wire sold them for pickling, which appears from this report to be 24.3 tons, as finally computed, and ask the copy be received, Mr. Diether, in lieu of your original, under the stipulation that it was duly received by the bank.

Mr. Diether: So stipulated.

The Court: You are offering this in evidence and requesting a stipulation from all parties it was sent on or about the date it bears to the parties to whom it was addressed?

Mr. Bunn: Yes, your Honor.

The Court: Dulien Steel Products, Matson, and the Citizens National Bank.

Mr. Hubert Morrow: We would like to see the letter before your ruling.

Mr. Bunn: This is November 29th, which is to the Citizens Bank.

The Court: This is October 29th. The one I have here, No. 43, is 10-29-46.

Mr. Bunn: I said October, and I meant November, and it is No. 45.

The Court: Oh, No. 45. All right. No. 45.

Mr. Hubert Morrow: No. 45.

The Court: No. 45, then, you offer in evidence

(Testimony of J. B. Londono.)

and request [412] a stipulation it was sent on or about the date it bears to the party to whom it is addressed, namely, Citizens National Trust and Savings Bank, in the regular course of business and was received by them?

Mr. Bunn: Yes, your Honor.

Mr. Diether: So stipulated.

Mr. Bunn: Now, what is the stipulation you want?

Mr. Diether: That you prepared that agreement.

Mr. Bunn: Yes, after conference with your attorney, Mr. O'Neil. It was prepared in my office, but pursuant to a conference and approval by the bank's then counsel, Mr. Frank O'Neil.

Mr. Diether: That is all I wanted.

Mr. Bunn: I will so stipulate.

Mr. Laven: The government cannot join in the stipulation.

The Court: No. 45 is received in evidence under the stipulation stated.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 45.)

The Court: You said you could not stipulate?

Mr. Laven: Well, we were not a party—the government was not a party to that, your Honor, to any arrangements between Mr. O'Neil and Mr. Bunn. I don't know what it was. [413]

(Testimony of J. B. Londono.)

Mr. Dasteel: We can't stipulate either, your Honor. It was in connection with payment on the note to the bank.

\* \* \*

The Court: I guess you will have to get Mr. O'Neil in here and have him testify.

\* \* \*

Mr. Hubert Morrow: We will stipulate it for Matson.

Mr. Laven: The government will stipulate as far as the letter being sent.

Mr. Dasteel: I will withdraw my objection and will so [414] stipulate.

Mr. Bunn: It is merely a transmittal of the check to the bank.

Mr. Diether: We are talking about the agreement.

Mr. Bunn: We are talking about the agreement instead of the letter. Well, the agreement was made pursuant to the letter of September 10th.

Mr. Laven: The agreement is the thing we can't stipulate to. [415]

\* \* \*

The Court: "In accordance with the contents of my said letter of September 27 to you, Dulien and Matson, this payment is without prejudice to any of the rights of any of the parties to the presently existing controversy involving the wire transaction."

So I can't see why the government can't stipulate and why counsel for the plaintiff should be put to the burden of bringing Mr. O'Neil in and say-



(Testimony of J. B. Londono.)

ing to him: Did we meet in our office on such-and-such a date and did we write this letter, and did we agree then?

Mr. Hubert Morrow: I am stipulating, without binding either Matson or the government.

\* \* \*

Mr. Laven: Under the circumstances that it is not binding on the government, I have no objection.

The Court: I don't know whether it is binding on the government or not.

Mr. Laven: There is a reservation there.

The Court: You still have your right to prove that they did not do everything they could in mitigation of the damages. If you want to, you can bring someone in here to testify that the wire was gold plated and worth \$1,000 a ton. [416] You can still do it.

\* \* \*

Mr. Laven: In view of the last paragraph, I have no objection.

\* \* \*

The Court: No. 45 is admitted in evidence, and the stipulation is approved.

Mr. Bunn: Now, it is apparent that I have failed to offer No. 43, which I now offer, and ask for a stipulation that the original of that letter, dated October 29th, addressed to Dulien, Matson, and the Bank was mailed in due course of business on or about the date it bears and duly received by each of them.

(Testimony of J. B. Londono.)

Mr. Laven: May I have an opportunity to read this letter, your Honor? [417]

The Court: Surely.

Mr. Bunn: The trouble, apparently, is that after Mr. Laven became attorney for the government, as distinguished from Matson, I wasn't specifically asked by him to resupply him in his new capacity with copies of all of these things that I had supplied to Matson when he was representing Matson.

Mr. Laven: We have no objection.

The Court: Do you join in the stipulation?

Mr. Laven: I join in the stipulation.

Mr. Diether: May I see it a moment, please? There is just one thing I want to check.

The Court: The stipulation is that it was sent on or about the date it bears in the regular course of business to the parties addressed and was received by them.

Mr. Hubert Morrow: Matson so stipulates.

Mr. Diether: So stipulated.

The Court: In evidence, No. 43.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 43.)

Mr. Bunn: Now, No. 47 is a letter dated—may I withhold that a moment, please? I have one that comes before that chronologically. That is No. 50, which is not on your list, but which I found at 11:30 last night and had overlooked. It is a letter from me, as attorney for J. B. [418] Londono, dated

(Testimony of J. B. Londono.)

September 7, 1946, to Dulien and the attention of Mr. Grinstein, the original of which letter Mr. Dasteel has told me in the recess he will stipulate was duly sent and received. I have the post office proof of it in this case, but it is simpler if he will stipulate. That is the letter urging an immediate conference. That was before the written agreement of September 10th. I will limit my offer to its being received against Dulien.

The Court: Only?

Mr. Bunn: Only, yes, your Honor. I can make proof of it, if necessary.

The Court: You are now requesting a stipulation from Mr. Dasteel that on or about the date the letter bears, to wit, September 7, 1946, it was sent in the regular course of business to Dulien Steel Products, Inc., in Los Angeles and received by them?

Mr. Bunn: Yes, your Honor.

Mr. Dasteel: So stipulated. We received it.

The Court: Very well.

Mr. Bunn: Will you go further, sir? And received by Dulien prior to the hour of the conference which was held on the 9th day of September, which was Admission Day?

Mr. Dasteel: I couldn't do that, because I don't know.

Mr. Bunn: All right. I will take the stipulation as [419] far as he gave it to me, then.

The Court: All right. In evidence, No. 50.

Mr. Diether: As to Dulien only.



(Testimony of J. B. Londono.)

The Court: As to Dulien only.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 50.)

Mr. Bunn: I offer and ask for a stipulation regarding No. 47, which is a letter, the original of which was a letter signed by me, dated March 15, 1947, directed to Dulien, Matson, and the Citizens Bank, and reporting on Mattoon's report of charges aggregating \$6,566.41.

Mr. Dasteel: May I suggest, Mr. Bunn, that in reporting these letters you refer to the name "Bunn" instead of to "me." It will be better for the record. Someone will not know who "me" is if they read the record later on.

Mr. Bunn: You are correct. Hereafter I will refer to myself impersonally, or, I will refer to Mr. Bunn impersonally.

May I have a stipulation that the original of that letter was mailed in due course on or about the date it bears and in due course thereafter received by each of you?

The Court: Referring to those to whom it was addressed?

Mr. Bunn: Dulien, Matson, and the Bank.

Mr. Diether: So stipulated. [420]

Mr. Dasteel: So stipulated.

Mr. Hubert Morrow: So stipulated.

Mr. Bunn: I offer that as Plaintiff's 47.

The Court: Admitted. No. 47 in evidence.

(Testimony of J. B. Londono.)

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 47.)

Mr. Bunn: Now, No. 48, dated April 11, 1947, is a copy of a report from Gonzalez & Blanco on balance of \$4,579.54, therein admitted to be due and being paid by them to the bank. The report is unsigned, but the bank has the original, I believe because my notes indicate that.

Mr. Diether: No, I don't think we have that.

Mr. Bunn: Well, maybe that will settle it. And with it No. 49, an original letter dated May 24, 1947, to Mr. Londono's counsel, Bunn, by Mr. Leonard Ward, the attorney for Gonzalez & Blanco.

The Court: You are offering these two?

Mr. Bunn: I will offer the two together, then.

The Court: You offer them in evidence and ask for a stipulation?

Mr. Bunn: Yes, sir. I am offering them in evidence and asking for a stipulation.

The Court: That No. 48 is a copy of a report sent by Gonzalez & Blanco to whom?

Mr. Bunn: To the bank through me. [421]

\* \* \*

Mr. Diether: Are you offering this as binding on the bank as to the amount of wire that Gonzales and Blanco received [422] at the dock?

Mr. Bunn: I am not offering it for that, but I am offering it to show that the payment of \$4,579.54, for which you have a credit shown on your note,

(Testimony of J. B. Londono.)

was received with this report and how it was calculated.

Mr. Diether: There is no question but what the bank received the sum Mr. Bunn mentioned, but this purports to show the number of rolls and number of tons of wire Mr. Gonzalez received from Matson under bill of lading No. 29, and I have no knowledge of that, and I don't wish to be bound by it.

Mr. John Morrow: You are not offering this as against Matson?

Mr. Bunn: I am not offering it as against anybody. I want to have it admitted that it was the report made to me as Mr. Londono's attorney by Gonzalez & Blanco.

The Court: By Gonzalez & Blanco?

Mr. Bunn: Yes.

The Court: Showing the breakdown of the check of \$4,579.54?

Mr. Bunn: Yes, sir.

Mr. Diether: What materiality has it? We will stipulate that we received that amount of money from Gonzalez & Blanco through you, and to that extent only. We do not care to stipulate any further. [423]

The Court: No. 48 and No. 49 will be marked for identification. I suppose somebody will have Gonzalez & Blanco in here some day.

Mr. Bunn: Oh, yes, sir.

Mr. Hubert Morrow: There are two separate documents for identification?



(Testimony of J. B. Londono.)

The Court: Yes, for identification only, Nos. 48 and 49.

(The documents referred to were marked Plaintiff's Exhibits Nos. 48 and 49 for identification.)

Q. (By Mr. Bunn): Now, Mr. Londono, did you yourself make the payment of \$3,050 which is credited on the note to the bank under date of August 20, 1946?

Mr. Diether: We have already so stipulated. We have already so stated.

Q. (By Mr. Bunn): In what manner did you make that payment?

A. I paid by check \$3,050.

The Court: What is the date of that, and the amount?

Mr. Bunn: August 20, 1946.

The Witness: It was the day they received at the bank the documents, the shipping documents for 112 tons shipped to Cartagena, August 20th.

Q. (By Mr. Bunn): I call you attention to the fact that the credit on the note indicates 112.75 tons. That is [424] 112¾ tons? A. Yes.

The Court: What was your question? Did he pay that?

Mr. Bunn: I asked him how he paid it.

The Court: All right. And he paid it by check?

Mr. Bunn: Yes, by his check.

Q. (By Mr. Bunn): Now, did you thereafter, after that payment of \$3,050 yourself pay anything

(Testimony of J. B. Londono.)

further on this note other than by permitting the——

The Court: Well, did you pay any cash or check?

Q. (By Mr. Bunn): Did you pay by cash or check anything else on this note, yourself?

A. No.

Q. How were all the other payments made?

(The question was interpreted.)

A. The other payments by Gonzalez & Blanco through Mr. Thomas Bunn to the bank, I suppose, by check.

Q. Well, in other words, you didn't pay it?

A. No.

Q. They were the proceeds of the sales of wire, were they? A. Yes.

Q. Under the agreement of September 10th?

Mr. Diether: Yes, certainly, under the agreement of September 10th. [425]

Mr. Bunn: All right. Thank you, Mr. Diether.

Q. Mr. Londono, do you yourself know the dates upon which Dulien removed any wire from Pier A at Long Beach? A. No.

Q. Do you yourself know exactly how much wire Dulien removed from the pier? A. No.

The Court: Do you know whether or not Dulien removed any? Do you know whether or not Dulien removed any?

(Testimony of J. B. Londono.)

The Witness: No. [426]

\* \* \*

Mr. Dasteel: That was my objection.

Q. (By Mr. Bunn): Mr. Londono, do you know now where there is any of the 2,000 tons of wire that——

The Court: ——is the subject of this controversy?

The Witness: Yes. I know Mr. Bunn has four coils, 100-pound coils, of that wire.

Q. (By Mr. Bunn): And other than that you have none of it—you or your lawyer; is that right?

A. No.

Mr. Dasteel: May I have the last question read by the reporter?

(Question read by reporter.)

Mr. Bunn: That is plain, isn't it?

Mr. Dasteel: Too plain. I can't understand it.

Q. (By Mr. Bunn): Did you participate in the selection of those four rolls of wire that you say your attorney, Mr. Bunn, has, from the entire lot on the pier at Long Beach?

A. Not that I remember.

Mr. Bunn: Will you read that question to him, please?

(Question and answer read by reporter.)

Q. (By Mr. Bunn): Were you present when those four rolls were designated for removal from the dock? [427]



(Testimony of J. B. Londono.)

Mr. Dasteel: Just a moment, please. Your Honor, he has already answered the question, and didn't remember.

Mr. Diether: Didn't participate.

Mr. Dasteel: Didn't participate and didn't remember.

The Court: Objection overruled. He asked if he was present. You can be present at a riot or even at a murder without participating.

Q. (By Mr. Bunn): Do you understand the question?

A. Yes. All I remember is why I asked to Koppel to have four coils——(through interpreter) four coils that would represent the whole pile of the wire.

Mr. Diether: What was that last part?

(The answer was read.)

The Court: That is, the various conditions?

The Witness: Yes, your Honor.

Mr. Diether: Mr. Bunn, may we find out what day that was?

Q. (By Mr. Bunn): Do you remember when it was that you instructed that four rolls of wire be taken out of the lot,—representative rolls?

A. No, I can't remember.

Q. Well, do you remember when it was in relation to any of the other things that you have testified to? That is, do you remember who else was with you when you gave that instruction? Do you

(Testimony of J. B. Londono.)

understand? Mr. Diether wants to know [428] when these four rolls were pulled out, I suppose.

A. It was from the Pier A-1, Long Beach. You, Mr. Bunn, were present. Mr. Arturo Rendon was present. But I don't know who in person taken the rolls from the pile.

Q. Oh, I see. We are not asking you about the transportation of the rolls from the pier to any place of storage. I am asking you about the determination—do you understand—the determination of the identity of those four rolls?

Mr. Hubert Morrow: I don't understand the question.

The Court: I don't know. What are you trying to find out? Do you want him to tell that he told Koppel to take the wire? He said he met Koppel around August 23rd, or something like that.

Q. (By Mr. Bunn): Where was the instruction given? Where were you when the instruction was given? You said a moment ago that Mr. Bunn was present. Where was that?

A. At the dock.

Q. Did you hear any conversation at that time about the selection of four rolls?

A. All I remember is I said Koppel to take four coils or several coils representing the general quality and the general—

The Court: Do you know when the date was?

Mr. Bunn: I don't know the date. I know the circumstances. [429]

The Court: If you know, go ahead and lead him

(Testimony of J. B. Londono.)

on it. I don't see how anyone can be harmed. You were trying to fix a date.

Q. (By Mr. Bunn): Was it not in the latter part of August, Mr. Londono?

Mr. Diether: 1946?

Mr. Bunn: Of '46, of course.

The Witness: It was in August or September, 1946.

Q. (By Mr. Bunn): Did you hear any more of the persons you have mentioned, Mr. Koppel or me, say, "Take that roll" and "this roll," and "this roll," and "this roll"?

A. Not that I remember.

Q. Did you designate anything more than that they should be representative? A. Yes.

Q. What did you say?

A. I said that I wanted not any particular coil, but just samples that—(through interpreter) that could represent the general quality of the wire.

\* \* \*

Q. (By Mr. Bunn): Did you say whether the rolls should be all black or all galvanized?

The Court: He has answered the question. He said he wanted a sample of different kinds of wire and different qualities.

The Witness: Yes, your Honor.

The Court: Is that what it was?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Londono, do you know what was the fair market value in Los Ange-



(Testimony of J. B. Londono.)

les of good galvanized wire of the description as to location of barbs which is contained in the sale order that you signed to Dulien?

Mr. Diether: May I have the question read, please?

(Question read by reporter.)

Mr. Dasteel: Your Honor please, I object to that. The witness has not qualified himself as an expert on the price and sales and merchandising of barbed wire. It is sold in many quantities and under many conditions; new, unused, used. It would take an expert to testify as to the market value.

Mr. John Morrow: The defendant Matson objects as no [431] sufficient foundation laid. The witness testified that he tried to buy wire at about that time and none was available.

Mr. Laven: I join in the same objection.

Mr. Diether: I join in all of the objections that have been made.

The Court: And on the general ground that the court hasn't any jurisdiction? Nobody has brought that up except the government. They always deny it.

Mr. Dasteel: Has the court jurisdiction over it?

The Court: I don't know what it is doing here. I couldn't understand your question. I was trying to follow it.

Mr. Bunn: I shall apologize always for that.

The Court: It was something in relation to the price of wire, with the number and kind of barbs.

(Testimony of J. B. Londono.)

Mr. Bunn: I was referring to the description in the sale order. I think if the reporter will read my question, I believe it is clear. But if it doesn't appear to be so, I will work it over.

The Court: The sale order gives the specifications, and I think you had better include it in your question. It was just generally this, as to whether or not the witness knew during the period——

(The question was re-read by the reporter.)

The Court: It is indefinite as to time. [432]

Mr. Bunn: I will reframe it.

Q. Do you know what was the fair market value on July 29th and in the month of August, 1946, of galvanized barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals? [433]

Mr. Dasteel: The same objection, your Honor.

Mr. Diether: Object to that as incompetent, irrelevant and immaterial, and no proper foundation.

Mr. Bunn: In Los Angeles, I should say.

Mr. Diether: And this witness is not qualified or shown to be an expert in the evaluation of barbed wire. Also, on the further ground that the question is directed to a particular type of wire, which is not the type of wire which is specified in the contract.

The Court: That is what it says here.

Mr. Diether: "As purchased by the seller from the Department of Interior."

Mr. Laven: Unused.

(Testimony of J. B. Londono.)

Mr. Diether: Unused.

The Court: It doesn't say that under the heading "Specifications."

Mr. Diether: You mean "Unused"?

The Court: No. Under the heading "Specifications," it says: "12 and 12½ gauge 2 strand with four point barbs spaced at 3 inch and 4 inch intervals."

Mr. Diether: But you must read a sales order of that kind from all four corners. You can't pick out just one particular item.

The Court: Let's hear your objection.

Mr. John Morrow: It seems to me the question should [434] incorporate the exact words of the sales order, and perhaps Mr. Diether pointed that out. I think it should include all of it. I don't mean the whole sales order, but the description of the commodity.

The Court: I think the objection is good, in that insofar as the question does not include the word "Unused."

Mr. Bunn: I will incorporate the word "Unused" in the expansion of the question, your Honor.

Mr. Diether: And, further, there is nothing about rejection.

The Court: "Unused government surplus barbed wire, 12 and 12½ gauge," and so forth.

Mr. Bunn: I will accept the correction to the question.

The Court: The question now is: Whether or not you knew on July 29th, or the latter part of



(Testimony of J. B. Londono.)

July and the month of August, 1946, the fair market price in Los Angeles of unused government surplus barbed wire, 12 and 12½ gauge, two strand with four point barbs spaced at 3 inch and 4 inch intervals?

Mr. Diether: May I have an objection, please?

Mr. Hubert Morrow: We object. It is not what he knew on that date, but whether he knew the value on that date.

The Court: I thought I said: Did you know the fair market value.

Mr. Hubert Morrow: You proceeded on whether he knew on [435] that date the fair market value.

Mr. Bunn: My question is what the market value then was of barbed wire in Los Angeles.

The Court: I though I said that.

Mr. Bunn: I thought so, too.

Mr. Diether: There is nothing to show he is an expert.

The Court: How much qualification does it take to be a barbed wire expert?

Mr. Dasteel: More than appears to the naked ear or eye, your Honor, as will be determined from the evidence in this record.

The Court: I think he is qualified to express his opinion. The question now is whether or not he knows it and that calls for a "Yes" or "No" answer.

The Witness: Yes, sir.

Mr. Diether: Just a moment.

The Court: The objection is overruled.

Mr. Diether: Will it be understood that on this

(Testimony of J. B. Londono.)

line of testimony as to the fair market value of barbed wire that it all goes in subject to my objection?

Mr. Dasteel: And my objection.

The Court: And Matson, also?

Mr. Laven: We join in that.

Mr. John Morrow: We join in that.

Mr. Bunn: I wish I could join somebody in something. [436]

Mr. Dasteel: Would your Honor entertain a proposal to question the witness on voir dire?

The Court: I think Mr. Bunn did that.

Mr. Dasteel: Not to my satisfaction.

The Court: I think he has laid a sufficient foundation for this witness to be able to answer that question, whether or not he knows. The objections are overruled and you may answer the question "Yes" or "No." Do you know what it is, now?

Mr. Diether: Then, you mean?

The Court: Do you know now what my question is or what Mr. Bunn's question is?

The Witness: Yes. I knew because I was——

The Court: No, just answer "Yes" or "No."

The Witness: Yes.

Q. (By Mr. Bunn): Now, what was the fair market value in Los Angeles at that time?

The Court: Of unused government surplus barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 and 4 inch intervals——

Mr. Diether: May I make an inquiry of you?

The Court: ——in ton lots?

(Testimony of J. B. Londono.)

The Witness: When I say——

The Court: Just a moment. He wants to object.

Mr. Diether: Is your Honor overruling the objection on [437] the ground that this witness was an owner of the wire and, therefore, permitted to express an opinion as to its value, or, are you permitting it on the ground he is an expert and therefore qualified to express his opinion?

The Court: I am overruling the objections on the ground that the evidence sufficiently shows he is in a position to express an opinion on either or both grounds. In other words, a man can be an expert, but he doesn't have to be the best expert in the world to express an opinion, or whether or not he may have an opinion.

Mr. Hubert Morrow: We are renewing our objection to this question; the same objection as made to the previous question.

The Court: I understand.

Mr. Dasteel: We join in that.

The Court: The record shows everybody objects on the grounds heretofore assigned. All objections are overruled. Now, you may answer the question.

The Witness: Yes. May I explain through the interpreter?

The Court: All right.

Mr. Bunn: I think I will have to suggest that he let the interpreter interpret piecemeal as he goes along rather than saying quite so much.

The Interpreter: I can interpret the whole—all the phrases [438] that Mr. Londono has spoken.



(Testimony of J. B. Londono.)

The Court: Have you finished your colloquy with the interpreter?

The Witness: Yes, your Honor.

The Court: Proceed.

The Witness (through interpreter): I am not able to determine the price of wire as purchased by the government, but I could tell what the price is, the approximate price at which was offered wire as was described—I didn't get all the specifications—by 12 and 12½ gauge.

The Court: Four point barbs at 3 and 4 inch intervals.

The Interpreter: 2 strands, and so forth.

The Court: That is not galvanized?

The Witness: Galvanized and black.

Mr. Diether: I will move to strike the answer as not responsive because you asked for the value of the wire.

The Court: He hasn't answered it yet. He hasn't gotten around to the price. He is coming up to that.

Q. (By Mr. Bunn): Now, what was the fair market value in Los Angeles at that time of such galvanized wire, in good condition and free from rust—

The Court: In ton lots.

Q. (By Mr. Bunn): —in ton lots?

Mr. Hubert Morrow: I understood the objection we made to the basic question goes to all these questions without our [439] interrupting.

The Court: Surely. It will be deemed that the

(Testimony of J. B. Londono.)

objections of all parties will go to the entire line of interrogation on the grounds heretofore assigned.

Mr. Diether: May I point out that this question is galvanized wire, and the contract specifies certain kinds of wire.

Mr. John Morrow: Furthermore, the last question says "good wire," and the contract doesn't say anything about good wire.

Mr. Bunn: There is an implied warranty.

Mr. Diether: Oh, no.

Mr. Dasteel: No.

Mr. Bunn: There was a special warranty.

The Court: If we don't have recesses every hour, everybody gets into an argument.

(A short recess was taken.)

The Court: Proceed.

Q. (By Mr. Bunn): Now, Mr. Londono, do you now remember the question?

Mr. Bunn: Will you read the last question, please?

Mr. Laven: Just a moment. I would like to interpose an objection at this time, your Honor, that the O.P.A. price set at that time was the fair market value, and that it could not be sold for any more than that, and that in Los Angeles the [440] value of wire at that time was \$61.70 a ton. Therefore, any price above that would not be competent evidence here, and I object to it upon that ground.

Mr. Hubert Morrow: Counsel will bear in mind that we made certain objections to this question. One

(Testimony of J. B. Londono.)

was that the question embodies the use of the word "good," and we incorporated the objections made to the prior question.

Mr. Bunn: I said "in good condition." The question says, "in good condition."

Mr. Dasteel: Where in the sales order is there reference made to "good condition"?

Mr. Diether: May I add to the objection of Mr. Morrow and Mr. Dasteel the further fact that counsel is attempting to elicit the value of galvanized wire.

The Court: And some of it was galvanized wire and some was black.

Mr. Diether: If you will recall the testimony of the witness, where he said that Mr. Stanley and Mr. Grinstein asked he take the whole lot, and they would not sell him galvanized wire separately, as Mr. Londono suggested, and so we say that the price should be elicited on the basis on which the merchandise is described in the sales order.

The Court: What is the name of that case on which you based your objection? It just came down.

Mr. Laven: I can't call it just at this moment.

The Court: Bring me the latest Supreme Court decisions and the little brown book. It is on my desk.

I think you would be justified in eliciting this witness' opinion as to the value of unused government surplus barbed wire, with the specifications of apparent good order and condition, or good order and condition.



(Testimony of J. B. Londono.)

Mr. Bunn: I will incorporate into my question the descriptive language.

The Court: Then why don't you just frame your question completely now.

Q. (By Mr. Bunn): Mr. Londono, what was the fair market value in Los Angeles on the 29th—

The Court: When you say "What was the fair market value," you are asking for his opinion?

Mr. Bunn: Oh, yes.

Q. —on July 29th, and throughout the month of August, 1946, for unused government surplus barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals, galvanized, in apparent good order and condition?

Mr. John Morrow: We have the further objection that there is no specification in the sales order of "apparent good order and condition," as well as all the objections heretofore made.

Mr. Dasteel: I would like to emphasize Mr. Diether's [442] objection to this point, that this was sold as a package job, both the galvanized and black cut. There was no difference at all between the price, no differential. The price on both black and galvanized was the same. It was a package deal.

The Court: Your question included "in tons"?

Mr. Bunn: I failed to say it. I will add: in tons.

The Court: All the objections are overruled, except Mr. Laven's, which I will rule on shortly, after I read this decision handed down March 27th, and

(Testimony of J. B. Londono.)

which, when I read it for the first time, I put a great big question mark on it.

Mr. Dasteel: Before you rule on Mr. Laven's objection, I don't understand his objection clearly. I would like to hear it.

The Court: Just a moment. Here is the case of *United States v. Commodities Trading Corp.*, and others. This was a suit against the government to recover in the Court of Claims just compensation for 760,000 pounds of whole black pepper, requisitioned by the War Department.

Mr. Hubert Morrow: That is the case in which Justice Frankfurter dissents, I believe.

The Court: I thought he dissented in every opinion he didn't write.

Mr. Hubert Morrow: Not quite. [443]

The Court: He dissented in part.

Mr. Hubert Morrow: It turned upon the criterion that the buying of the pepper took place over a period of time.

The Court: That's right. The majority opinion was written by Justice Black, and held that what was described as a retention value could not be taken into consideration.

Mr. Hubert Morrow: Justice Frankfurter said it should have been given consideration.

The Court: I do not think that the decision in this case, *United States v. Commodities Trading Corporation*, is controlling in this instance. The question here was solely what was the measure of just compensation as against the government of

(Testimony of J. B. Londono.)

the United States seizing a necessary product in war time. The government's objection is overruled. All objections are overruled.

Mr. Diether: May I ask Mr. Laven what the basis for his statement is that the O.P.A. price was \$71.60?

Mr. Laven: No, \$61.70 a ton. There was some correspondence and some conversations between Mr. Bunn and Mr. Banning, and Mr. Bunn's report of his call to Washington, to the Metals Price Branch of the O.P.A., which must approve the sales price of the imports, and that it was considered.

The Court: Of exports or imports?

Mr. Laven: Of imports.

The Court: This is not an import. [444]

Mr. Laven: They said under the ruling that shipments from Honolulu were imports, according to the O.P.A. regulations, and that they had an opportunity to sell it, I believe, in this country, or in the United States for that price, but because Mr. Londono wanted to transship it to South America, they refused to sell it for the \$61.70 price, the wholesale price in this area at that time.

Mr. Bunn: I don't understand. I don't understand the last part of that statement. That does not click with me, if you are quoting me on that.

The Court: No, I understood he was quoting Mr. Somebody, in Washington.

Mr. Laven: Mr. Banning of Matson, with whom Mr. Bunn conferred, or who reported to Mr. Banning his findings relative to inquiry in Washington,



(Testimony of J. B. Londono.)

and Mr. Bunn refused to permit it to be sold, I believe, to Sugarman in San Francisco, who made an offer of something like \$71 a ton until they got the approval of the Metals Price Board in Washington.

The Court: That was a sale in the United States?

Mr. Laven: That was a sale in the United States.

The Court: Not for transshipment?

Mr. Laven: Not for transshipment, your Honor.

Mr. Bunn: Is that any indication of any offer?

The Court: The objection is overruled.

Mr. Diether: If there is any O.P.A. ceiling on this sale [445] of the wire in the United States, I wish also to object to the testimony on the ground it is contrary to the O.P.A. price.

The Court: The objection is overruled.

Mr. Bunn: Now, may the witness be put the question as last given by me and amplified once, I think, at the court's suggestion.

(The question referred to was read as follows: "Q. Mr. Londono, what was the fair market value in Los Angeles on the 29th—on July 29th and throughout the month of August, 1946, for unused government surplus barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals, galvanized, in apparent good order and condition, in ton lots?")

The Court: One more element.

(Testimony of J. B. Londono.)

Mr. Bunn: Thank you.

The Court: —for transshipment.

Q. (By Mr. Bunn): —for transshipment out of the country? [446]

Mr. O'Malley: Objected to as indefinite and uncertain. Shipment to where?

Mr. Bunn: Out of the country.

The Court: To South America.

Mr. Bunn: To Colombia.

The Court: All right. To Colombia.

The Witness: It was between \$160 per ton and \$180 per ton, because for good wire, galvanized wire—I can't say government wire, but I say galvanized wire, twice, gauge 12, four point at 4 inch, and I had offers at that time for that price, and I knew that Gonzalez & Blanco sold wire for that price in Los Angeles for transshipment to Mexico.

Mr. Laven: I object to the last part of the answer as to what Gonzalez & Blanco did.

Mr. Bunn: It is a part of the foundation for his narration of the value.

Mr. Laven: And it is not responsive.

The Court: No, it isn't responsive, but somebody is going to take him on cross-examination and get onto that, and then he is going to say the same thing. The motion to strike is denied.

Mr. Hubert Morrow: May I ask to hear the answer read?

The Court: Well, the long and short of it was that it was between \$160 and \$180 a ton.

Mr. Hubert Morrow: I know that is the long

(Testimony of J. B. Londono.)

and short of [447] it, but it is in between I am interested in.

(The answer referred to was read.)

Mr. Hubert Morrow: Your Honor, it seems to me that the answer is not directed to the question. It has eliminated one of the elements of the question. He said he can't say as to government surplus wire.

The Court: He has, however, included the two-strand, 12-gauge, 4 barbs spaced at three and four-inch intervals, which makes it sufficiently certain to allow him to answer.

Mr. Diether: He referred to the fact that Gonzalez & Blanco were selling wire in Mexico. That, I think, is not responsive, and is also hearsay on his part, and I think it should be stricken.

The Court: It is hearsay, but as I indicated to Mr. Morrow, somebody will take him on cross-examination and out it will come. If you want it out, I will strike it. Do you want it out?

Mr. Diether: Please.

The Court: All right. It is just more words in your transcript.

Mr. Bunn: You only struck out a part, your Honor?

The Court: The part where he said that Gonzalez and Blanco shipped some to Mexico, and so forth.

Q. (By Mr. Bunn): Now, Mr. Londono, do you know, or I believe the court said to fix it as



(Testimony of J. B. Londono.)

an opinion—what is [448] your opinion as to what was the fair market value in Los Angeles on July 29th and throughout the month of August, 1946, of unused government surplus barbed wire, 12 and 12½-inch, two-strand with 4 point barbs spaced at three-inch and four-inch intervals, black, in apparent good order and condition, in ton lots—

The Court: For—

Q. (By Mr. Bunn): —for transshipment out of this country—

The Court: To—

Q. (By Mr. Bunn): —to South America?

Mr. Diether: Object under all of the grounds heretofore stated.

The Court: It will be deemed all objections heretofore made by anybody are taken on behalf of them to the entire line of questioning.

The Witness: I had no offer from Colombia at that time for black wire. I knew by Gonzalez & Blanco—

The Court: Not how you know. Just what it was. Did you have an opinion as to the value?

The Witness: Yes. It was between \$120 per ton and \$140 per ton.

The Court: All right. Of course, in the matter of forming an opinion a man can ask questions. That is the way the most of them get their opinions—the experts. [449]

Q. (By Mr. Bunn): Now, Mr. Londono, do you know, or, do you have an opinion as to what was the value of unused government surplus barbed

(Testimony of J. B. Londono.)

wire, 12 and 12½-gauge, two-strand with 4 point barbs spaced at three and four-inch intervals, in apparent good condition in ton lots in Colombia in the month of August, 1946?      A. No.

Mr. Diether: Just a moment. His testimony is that he wasn't in Colombia at that time. He was in this country.

The Court: He still might be able to give an opinion as to the value of it. He was in the export business in Colombia. But his answer is "No." Do you want his answer—

The Witness: I have not completed my answer.

The Court: You haven't completed it?

The Witness: I didn't know the price in Colombia.

Mr. Bunn: I beg your pardon?

The Witness (Through interpreter): I didn't know the price in Colombia. I knew the price at which merchants in Colombia were willing to buy the wire.

Mr. Bunn: That is the value.

The Court: I don't know, but it is a sufficient factor for him to express an opinion.

Q. (By Mr. Bunn): All right. What was that price?

A. It was between \$160 per ton and \$180 per ton for galvanized wire. [450]

The Court: And how much for black?

The Witness: I had not offer for black, your Honor.

Q. (By Mr. Bunn): Just a moment, please,

(Testimony of J. B. Londono.)

Q. Mr. Londono, I call your attention to your answers to certain interrogatories propounded to you by the Citizens Bank, and answered and signed by you in Colombia, and on file here in this [451] case.

The Court: What date were they filed? Do you recall, Mr. Bunn?

Mr. Bunn: I am sorry, my copy doesn't show the date of the filing. But I have a copy of it here. It was before the bank's answer was filed. They were dated December 10, 1947, and his answers were dated in Colombia, so it was probably two weeks thereafter.

The Court: I have it; filed December 30th. Now, which one is it?

Q. (By Mr. Bunn): I call your attention to the fact that in one of those answers on page 14, the answer to question 24, you show 4.9 tons of wire as having been lost account of. Do you understand me?

May I show the witness a copy of his answer?

The Court: Surely.

Q. (By Mr. Bunn): I show you a copy of your answer to the bank's interrogatory No. 24.

A. Yes.

Q. And call your attention to the statement herein contained over your signature that 4.9 tons were lost account of.

A. Yes.

Q. Will you explain that? That is, is that included in the 81 tons you say the shipment was short?

A. No, it is out of that 81 tons. [452]



(Testimony of J. B. Londono.)

Q. When was that determined, do you know?

A. By your records, by Mr. Bunn's records, after Gonzalez & Blanco take the wire.

Q. You mean on the final wind-up or disposition of the last of the wire?           A. Yes.

Q. Do you know what became of that 4.9 tons?

A. No.

Q. Do you know that it ever existed in this shipment?

Mr. Hubert Morrow: Which shipment?

Mr. Bunn: The shipment on the "White Squall" from Honolulu.

(The question was interpreted.)

The Witness: No, I don't know.

The Court: He says he doesn't know.

Mr. Diether: What record is the witness referring to? He says, "Mr. Bunn's records."

Q. (By Mr. Bunn): Mr. Diether wants to know what records you are referring to when you say "Mr. Bunn's records"?

A. I call records the shipping documents on the shipment to Colombia and the record of the sales to Gonzalez and Blanco. [453]

\* \* \*

April 25, 1950.

Mr. Dasteel: I believe counsel said that he wished to offer some wire in evidence, some exhibits, and it should be on direct examination while the

(Testimony of J. B. Londono.)

witness is on the stand. I think he should complete his direct examination.

Mr. Bunn: I can't offer the wire in evidence this morning because Mr. Londono himself cannot under oath trace that wire from the dock to this courtroom.

Mr. Hubert Morrow: Cannot it be put in for identification and let him testify to it, subject to a motion to strike?

Mr. Bunn: I am very happy to do so.

Mr. Laven: If the court please, I would like to make a request. Before these exhibits are offered, either for identification or otherwise, so there wouldn't be any question about it, we would like to have the privilege of taking some samples of wire for further inspection.

The reason we ask it now is we don't want to do it after it is offered; we want to do it before it is offered. [481]

Mr. Bunn: I certainly have no objection to their taking samples from those rolls.

The Court: Then they should be marked for identification before you take any samples.

Let us mark them for identification, Mr. Clerk.

The Clerk: No. 51.

The Court: We will make them 51, 52, 53 and 54.

Mr. Bunn: May I ask that the one to the court's left——

The Court: The galvanized, the white wire?

Mr. Bunn: ——be marked No. 1.

The Court: No. 51 is the galvanized.

(Testimony of J. B. Londono.)

(The wire referred to was marked Plaintiff's Exhibit No. 51 for identification.)

Mr. Bunn: And 52 the one immediately next to it to the left.

The Court: No. 52 is the next one, and then 53 the next, and 54 the black.

We will tie tags on them at this time so they may be marked.

(The wire referred to was marked Plaintiff's Exhibits Nos. 52, 53 and 54 for identification.)

The Court: Now without going through all the process of having somebody get up here and tell us what they are, what are they? They are hundred pound rolls or 28 pound rolls? [482]

Q. (By Mr. Bunn): Mr. Londono, what poundage are these?

A. Supposed to be hundred pounds.

Q. Mr. Morrow asks if they are not 103 pound gross. What is your answer?

A. Between 100 pounds and 103 pounds.

Q. But called 100 pounds net?

A. Net; yes.

Q. Now the one on the extreme right over here——

The Court: No. 51.

Q. (By Mr. Bunn): ——No. 51, will you tell us what kind of wire that is, if you know?

A. Galvanized wire.

Q. And the one to the extreme left, way over



(Testimony of J. B. Londono.)

there by Mr. Dasteel, No. 54, can you tell us or do you know what kind that is?

A. Look black wire.

Q. You mean looks like?

Mr. Dasteel: Is it or is it not black?

Mr. Hubert Morrow: It appears to be black.

The Court: I understand him. It looks like black wire. That is what he says.

Q. (By Mr. Bunn): Now, Mr. Londono, I call your attention to the two [483] rolls, Nos. 52 and 53, in the middle there, and ask you if you know what kinds of wire they are.

A. The 53 looks like rusty wire but I can't say whether it was galvanized or not. It is not galvanized now.

Q. Now No. 52.

A. It is very rusty wire. I can't say it was galvanized or not. Of course now it is not galvanized.

Q. What do you mean by the statement that now it is not galvanized?

A. Because it don't have any——

Mr. Hubert Morrow: Isn't it plain what he means?

The Court: He is asking the interpreter.

The Witness (Through Interpreter): ——any coating of zinc.

The Court: Very well.

Q. (By Mr. Bunn): Now, Mr. Londono—you had better ask him this in Spanish—to what extent, if at all, are those rolls of wire representative of

(Testimony of J. B. Londono.)

the general mass or wire which was on the pier, 1-A, at Long Beach, when you saw it as described in your testimony?

Mr. John Morrow: Objected to as no foundation laid as to which occasion he means, your Honor. He testified to several occasions.

Mr. Dasteel: It should be limited to some particular [484] time.

The Court: He testified 75 per cent of the wire was rusty and 25 per cent of it was usable. The objection is overruled. You can answer the question.

The Witness (Through Interpreter): It includes Gonzalez & Blanco wire.

The Court: Let me ask a question.

You testified that about 75 per cent of the wire—what page was it he corrected?

Mr. Hubert Morrow: Page 286, lines 9 and 10.

Mr. Bunn: Is the court not asking about the correction I made without having it in my notes, changing the word from “hard” to “half”?

Mr. Morrow: That is one.

Mr. Dasteel: I move that the last answer of the witness be stricken as not responsive to the question.

The Court: The question and the answer are both stricken.

Mr. Londono, you testified that about 75 per cent of the wire was rusty and 25 per cent in good condition, including the black and galvanized.

Mr. Bunn: If your Honor please, that testimony was as to the portion that he shipped to South America.

(Testimony of J. B. Londono.)

The Court: As to the portion shipped to South America.

Are any of those exhibits there, 51, 52, 53 and 54, [485] representative of the 75 per cent you described or the 25 per cent you described? Do you understand the question?

The Witness (Through Interpreter): Yes.  
The 51.

The Court: No. 51 represents what?

The Witness: Represents the galvanized.

The Court: What per cent?

The Witness: About 20 per cent.

The Court: 20 per cent?

The Witness: Yes.

The Court: Go ahead with your answer.

The Witness: And the 54, No. 54——

The Interpreter: He said that 25 per cent represents both. This is 51 and 54.

Mr. Diether: What is that?

Mr. Dasteel: I don't get his answer.

Mr. Bunn: Will the reporter read that last answer? I think it is clear.

The Court: I understood him. Nos. 51 and 54 represent the 25 per cent that he spoke of in his testimony as being in good condition, including the black and the galvanized shipped to Colombia. [486]

Mr. Bunn: Not including, if your Honor please, but that he was speaking in his testimony about that which was shipped to Colombia.

The Court: He testified that he shipped the 1,050 tons.



(Testimony of J. B. Londono.)

Mr. Bunn: 1,051 tons.

The Court: 1,051. I think he later corrected that and testified later on that he shipped about 200 tons of galvanized.

Mr. Bunn: If your Honor please, you asked him and he cleared that up, that that was included in the 1,051.

The Court: 200 tons of galvanized wire and 851 tons of black wire.

Now, Mr. Witness, the 200 tons that you testified, approximately, that you shipped to Colombia of galvanized wire was in approximately the same condition as Exhibit 51—the galvanized?

The Witness: No, your Honor. Some of the wire that was shipped was rusty—the galvanized was rusty.

The Court: Some of the galvanized was rusty?

The Witness: Yes, your Honor.

The Court: Now, the 851 tons of black wire that you shipped, you testified that 25 per cent of it was dirty and 75 per cent of it was badly rusted?

The Witness: Yes, your Honor.

The Court: Are any one of those exhibits, 52, 53 or 54 [487] comparable to either the dirty wire or the badly rusted wire?

The Witness: Yes.

The Court: Which ones?

The Witness: The No. 52 and 53 represents the rusty, the badly rusty wire, and the one that was black wire represented the dirty wire but usable, more or less in good condition.

(Testimony of J. B. Londono.)

The Court: I understand his answer.

Mr. Bunn: I do.

The Witness (Through Interpreter): 53 and 52 represent the wire that I shipped 75 per cent of, and 54 represents the wire that was 25 per cent, that although dirty was usable.

The Court: All right.

Q. (By Mr. Bunn): What do you mean? Was there any mud on the wire? Do you understand "mud"? (Interpreted.)

A. (Through Interpreter): There was plenty mud, but it has dried with time.

Mr. Diether: What is that answer?

The Witness (Through Interpreter): There was plenty mud on the wire, but it has dried with time.

Mr. Hubert Morrow: Which wire is he talking about? That shipped, or that on the dock, or what?

The Court: I don't know.

Q. (By Mr. Bunn): To what extent, if at all, was there [488] mud on wire as you viewed the entire quantity of wire on the dock?

Mr. Diether: That is the same question.

Mr. Dasteel: That is the same question. The witness has already testified that the mud all dried off.

The Court: He didn't say "dried off."

Mr. Dasteel: He said, "dried in time," which could mean the same thing.

The Court: Objection overruled.

Mr. Bunn: You may answer the question.

(Testimony of J. B. Londono.)

The Witness (Through Interpreter): About 50 per cent.

The Court: What is the difference, whether there is mud on it or not? Is there going to be some contention that he weighed mud and sold it for barbed wire?

Mr. Bunn: Not as to weight, but as to appearance of the barbed wire for sale.

Mr. Dasteel: Your Honor please, in any event I object that that type of testimony is incompetent, irrelevant and immaterial, and, certainly, when we sold this wire we did not tell him there would be no mud on it. We said, and it is in the contract in black and white, that it was to be as purchased from the Interior Department. If we purchased black wire from the Interior Department that had mud on it, that is what he bought, and that is what he received.

The Court: If I sustained your objection, it would be a [489] decision in the law suit in your favor.

Mr. Dasteel: I would like that.

The Court: The objection is overruled.

Mr. Bunn: Might we have the question, please?

The Interpreter: He answered, "About 50 per cent."

Mr. Diether: Had mud on it?

Q. (By Mr. Bunn): You say about 50 per cent had mud on it, Mr. Diether asked? A. Yes.

Mr. Dasteel: May I take the witness on voir dire to find out if he knows what 50 per cent means?



(Testimony of J. B. Londono.)

The Court: No.

Q. (By Mr. Bunn): Now, Mr. Londono, when you first saw wire on the pier at Long Beach in the week which began on July 29th, did you see more than one kind of wire?

Mr. Diether: That has already been asked and answered and gone over on direct examination.

The Court: Yes.

Mr. Bunn: All right.

The Court: While he is there, I would like to ask one or two questions. Do any one of these exhibits, 51, 52, 53 or 54, represent what you have testified to as not usable wire, so badly rusted it could not be used (interpreted).

The Witness: Yes, your Honor. 52 is unusable.

The Court: Is unusable. Was that the approximate [490] condition of the wire that you had pickled?

The Witness: Yes, your Honor; and 53, too.

The Court: Is not usable?

The Witness: Is usable.

Mr. Bunn: Under what circumstances?

The Witness (Through Interpreter): Under the circumstances of the wire being very scarce and after it had been cleaned.

The Court: All right.

Q. (By Mr. Bunn): Mr. Londono, do you observe any rust on No. 51?

Mr. Dasteel: I object to that, your Honor please. The exhibit speaks for itself. And I think

(Testimony of J. B. Londono.)

it calls for the conclusion of the witness. We have the exhibit here.

The Court: Overruled.

The Witness (Through Interpreter): Very slight spots of oxidation.

Mr. Diether: May the record show the witness has gotten within a foot of Exhibit 51 and examined it closely, and spent approximately 20 seconds in examining the coil.

Mr. Dasteel: And then had trouble finding it.

The Court: The latter part may be stricken.

Mr. Bunn: I think that is all by me from this witness at this time, if your Honor please.

I see that I failed to offer in evidence, although it is [491] marked for identification, item No. 2, which is sale order No. LA 712, and I wish at this time to offer that into evidence—the sale order.

Mr. Diether: What number is that?

Mr. Bunn: No. 2 on my list of documents. I have checked the transcript carefully and it appears in the transcript index as being in for identification only, unless I am mistaken.

The Court: It is marked in evidence. In any event, it is in evidence.

(The document referred to, heretofore marked Plaintiff's Exhibit 2, for identification, was received in evidence.)

The Court: Cross-examine. Or do you want a morning recess?

(Testimony of J. B. Londono.)

Mr. Dasteel: That would be a good idea, your Honor.

The Court: All right.

(A short recess was taken.)

Mr. Bunn: I am thinking that we should be thankful we don't have any more recesses than we do. The witness at the recess went to Mr. Morrow and told him there was one thing further he should say, that he wanted to say in answer to my question about the extent to which there was mud on the wire, and he wants permission to amplify that answer.

The Court: All right. [492]

Mr. Bunn: What was it you wanted to say about mud on the wire?

Mr. Hubert Morrow: I don't know why he came to me, but he did.

Mr. Bunn: Well, you are just benign-looking.

The Witness (Through Interpreter): Some of the wire was sort of caked up with rust and mud so that there could hardly be distinguished the barbs in it.

The Court: All right.

Mr. Bunn: Is that all you wanted to say?

The Witness: Yes, sir.

The Court: Cross-examine.



(Testimony of J. B. Londono.)

Cross-Examination

By Mr. Dasteel:

Q. Mr. Londono, I believe you testified to the fact that prior to the time you contacted Dulien Steel Products, Inc., whom I shall hereafter refer to as Dulien, that you had dealings with the Citizens National Bank of Los Angeles in connection with letters of credit; is that right? A. Yes.

Q. And that you had a letter of credit in the amount of \$160,000 with the Citizens Bank?

A. Yes.

Q. Whose money was that?

Mr. Bunn: I object to the question as incompetent, [493] irrelevant and immaterial. He is talking about a previous transaction. This man is an importer.

The Court: What difference would it make whose money it was?

Mr. Bunn: I say, what difference does it make? It is immaterial.

Mr. Dasteel: If your Honor please, we want to show—the plaintiff alleges he used his own money and he lost his own money, and I want to find out if he was operating for himself as a principal or as an agent for someone in Colombia——

Mr. Bunn: Even if he were——

Mr. Dasteel: ——or if he is the real plaintiff in this case.

Mr. Bunn: Even if he were operating as an agent, he would still have a perfect right to bring

(Testimony of J. B. Londono.)

an action in his own name for losses that he suffered or that were suffered in the transaction. But since the question has been injected, I withdraw my objection.

Mr. Dasteel: You may answer.

The Witness (Through Interpreter): Mr. Echavarria of Colombia send me that money as an advance payment on 1,000 tons of barbed wire that I have sold him. [494]

Q. (By Mr. Dasteel): Was this the \$160,000 that you used to pay Dulien for the wire?

A. Yes, it was one part of the \$214,000.

Q. Now, you shipped a certain quantity of wire to Echavarria, this customer that you speak of. How much in money did you charge him for the wire you shipped?

Mr. Bunn: I object to the question as incompetent, irrelevant and immaterial. The essence of this lawsuit, as I take it, is, basically, first the difference between the price which this man paid and the reasonable market value in Los Angeles for export to South America, and even if—although it didn't happen—even if he had sold the wire at a profit, he would still, under my interpretation of the cases, be entitled to his damages. He didn't, but if he had. And I contend that the question is immaterial, incompetent and irrelevant.

The Court: I think counsel is entitled to elicit this information on cross-examination. It is one of the elements that may be considered.

The Witness may answer the question.

(Testimony of J. B. Londono.)

The Interpreter: Will you repeat the question?

(The question referred to was read by the reporter as follows: "Q. Now, you shipped a certain quantity of [495] wire to Echavarria, this customer that you speak of. How much in money did you charge him for the wire you shipped?"

The Witness: In order to collect the credit from him, Mr. Echavarria, for \$160,000, I made invoice at the price of \$160 per ton cif Colombian port.

Later on, when I suppose that I will ship to him good galvanized wire, as I supposed to purchase from Dulien, but when I knew the wire, I saw the wire, I invoiced to him \$107 per ton, plus the freight and moving charges here, in order to comply with the control board regulation in Colombia. In other words, I charge Mr. Echavarria the money I pay here to Dulien and to Mattoon.

The Court: How much money did you get from Echavarria?

The Witness: I had from him \$75 per ton.

The Court: \$75 per ton?

The Witness: Yes.

The Court: That is the total?

The Witness: Yes, sir.

The Court: Of all the 1051 tons you shipped?

The Witness: 1025 tons, your Honor, because additional 25 tons I shipped in my name to my company in Colombia.

The Court: Then your answer is that you got



(Testimony of J. B. Londono.)

\$75 a ton from Echavarria for the 1025 tons shipped to him in Colombia?

The Witness: Yes, your Honor. [496]

The Court: Plus repayment to you of the freight?

The Witness: Oh, yes. He paid the freight.

Q. (By Mr. Dasteel): Then you have a credit against that \$160,000 of Mr. Echavarria's money of how much in connection with the wire you shipped to him?

The Court: That assumes that it was Echavarria's money. He said that he advanced the money to him.

Mr. Bunn: I object to the question on that ground, and thank you.

Q. (By Mr. Dasteel): Have you paid Mr. Echavarria back the difference between \$160,000 he advanced you and the amount of wire you sold him?

A. Yes.

Q. When did you do that?

A. In several times in 1947.

Q. Then at this time you do not owe Mr. Echavarria any money as a balance due on that \$160,000 letter of credit, is that right?

A. I don't owe him as a part of the \$160,000 letter of credit, but I owe him the interest from the time he send me the money until the time I ship the wire, and on to the time I pay him the last cent.

Q. Now, Mr. Londono, you testified that on July 11 you [497] went to the office of Dulien?

A. Yes.

(Testimony of J. B. Londono.)

Q. About some barbed wire? A. Yes.

Q. How did you know that Dulien had barbed wire for sale?

A. Mr. Tuthill and Mr. Stinson reported to Mr. Rendon in his office in my presence that some barbed wire will be available at the Dulien office.

\* \* \*

Q. Just a minute. Confine yourself to answering the question, please, and just state the conversation that took [498] place, what was said and by whom on that particular occasion.

A. Mr. Tuthill and Mr. Stinson come to the office of Mr. Rendon. I was present. Mr. Tuthill and Mr. Stinson told Mr. Rendon——

Q. Who said it? A. Both.

Q. They didn't talk at the same time. Just tell me who said what. A. Mr. Stinson.

Q. What did he say?

A. That some barbed wire, it was available in Los Angeles.

Then Mr. Tuthill take place in the conversation and say, "Yes, some barbed wire is available in Los Angeles."

And I answer, "I want to see the wire."

They take us, Rendon and I—— [499]

\* \* \*

Q. Then what did you do? You went down to the office of Dulien?

A. We went down to Dulien's office in Mr. Tuthill's car.

(Testimony of J. B. Londono.)

Q. Just a moment. Who went with you to Dulien's office?

A. Mr. Stinson, Mr. Tuthill, Mr. Rendon and I in Mr. Tuthill's car. He drove. A black Packard, I remember.

Q. Who did you see at Dulien's office?

A. I saw Mr. Grinstein and many other men in the office. I talked to Mr. Grinstein.

Q. What did you say to Mr. Grinstein?

A. Mr. Tuthill told Mr. Grinstein that Mr. J. B. Londono from Colombia, South America, wants to buy barbed wire. And I say, "Yes, I am looking for barbed wire. I want to buy barbed wire."

And Mr. Grinstein told me that Dulien has a lot of barbed wire coming from Honolulu.

Then I ask about the quality of the wire, or samples of the wire, and he say that the wire is coming but they had in his place a quantity of wire that would represent the lot coming from Honolulu. [500]

Then I asked to see it. Then Mr. Grinstein take me and Mr. Rendon and Mr. Tuthill and Mr. Stinson out to the yard, open place, and show me a pile, a small pile of barbed wire, looked black, covered with grease, and he told me that the wire coming from Honolulu would be the same quality, the same appearance of that wire. And in addition to that lot, to that quantity of black wire, he told me that it would be equal quantity of galvanized wire.

And I asked him about, he has that kind of gal-



(Testimony of J. B. Londono.)

vanized wire, and he say, "No, we have not the same kind of galvanized, we have small quantity of galvanized wire which quality is equal to the galvanized coming from Honolulu." And he showed me small coils of galvanized.

Then we discussed about the price. The first time they asked for \$108, and I offered \$103 or \$105. At least I accepted \$107 per ton.

Then I required from Mr. Grinstein samples, and he offered to give me cut samples of the wire.

Then into the office I accepted, I agreed to buy 2700 tons of barbed wire, supposed to be half galvanized and half black.

Q. When Mr. Grinstein showed you some barbed wire, didn't he say, "It is this type of wire"? Didn't he use the word "type"?

A. He used the words, "The wire coming is the same." [501]

Q. He didn't tell you, did he, that this was not from the lot of wire that was in Honolulu, he told you that this is different wire?

A. He told me that wire is part of the wire bought by Dulien from the government in Honolulu.

Q. He told you that the wire he showed you on July 11th was part of the wire that was in Honolulu, is that your statement?

A. No, part of the wire that Dulien had bought from the government in Honolulu. And at that time I understood that Dulien had other lots of wire that had come previously from Honolulu. [502]

Q. Didn't you testify to the effect that you

(Testimony of J. B. Londono.)

knew that this wire was not the wire from Honolulu, but was other wire and that Dulien, through Grinstein, simply told you that this is the type of wire which we had in Honolulu?

A. (Through Interpreter): Was what I understood.

Q. What was your answer?

The Court: I don't know how he can understand your question if we have a little difficulty with it in the English language.

Q. (By Mr. Dasteel): I will restate the question in plainer language. Didn't you testify, both in your deposition and here in this court, to the effect that the samples of wire which were shown you at Dulien's office were not from the lot of wire that was being brought from Honolulu?

The Court: Counsel, if you are attempting to impeach him, I think you had better refer the court to the testimony you refer to.

Mr. Dasteel: I will withdraw that question for the present, in order not to take the time to dig it up. I will withdraw the question.

Q. (By Mr. Dasteel): Now, the wire that Mr. Grinstein showed you on July 11th, was that covered with grease? A. Yes, black.

Q. And he told you that the wire that was being shipped from Honolulu would also be covered with grease, isn't [503] that correct?

A. Yes, and he gave me the name of the grease. I know that because in my telegram to Colombia reporting the business——

(Testimony of J. B. Londono.)

Q. Wait a minute. In your telegram——

A. I sent a telegram to Colombia—when I bought the wire from Dulien. I sent a telegram to Colombia and I used the name of the grease that Mr. Grinstein told me.

The Court: What was the name of the grease?

The Witness (Through Interpreter): Cosmoline from DuPont.

Q. (By Mr. Dasteel): Did you take with you samples of the wire that Mr. Grinstein showed you that day, on July 11th?

A. I take with me the samples that Mr. Grinstein gave me on July the 11th or July the 12th.

Q. Can't you remember definitely which day you took those samples?

A. (Through Interpreter): 99 per cent probabilities are that it was the 12th.

Q. Are you sure?

The Court: He just got through saying he was 99 per cent. [504]

\* \* \*

Q. (By Mr. Dasteel): You are 95 per cent sure? A. 99 per cent.

Q. Oh, 99 per cent sure? A. Yes.

\* \* \*

Q. (By Mr. Dasteel): I show you Plaintiff's Exhibit No. 36, which purports to be six or seven strands of wire approximately 7 inches in length. Now, I ask you is this the samples that you just testified to, that you think you got on July 12th?



(Testimony of J. B. Londono.)

A. (Through Interpreter): Not that I believe, but I am sure that they are.

Q. At the time you received them, where were you? Were you in the office of Dulien, or out in the yard?

A. In the office of Dulien with Mr. Arturo Rendon.

Q. Did you see these samples cut off a roll? Did you see them cutting them off?

A. I don't remember, but I was sure that the quality—— (through Interpreter) I am not sure, but I am sure that this is the same quality of wire which I was shown the day before.

Q. That is not the question I asked you. I asked you if you saw them cut these samples from the rolls? [505]

A. I don't remember, Mr. Dasteel.

Q. You don't remember? A. No.

Q. What do you remember in connection with just how you received them?

A. I remember that Mr. Grinstein in person gave me the samples in the office.

Q. Well, did he bring it in his hands and say, "Here it is"? Just how did he do it? Do you remember the circumstances under which this was produced and shown to you (interpreted)?

A. (Through Interpreter): I am sure that he gave me the samples personally, but I cannot determine the words he used when he made delivery of the samples.

(Testimony of J. B. Londono.)

Q. Who was present at the time that you received these samples?

A. Mr. Rendon, and I don't know if Mr. Tutill was.

Q. What did you say to Mr. Grinstein when he handed you the samples, after you had looked at them? Did you make any statement?

A. I take the samples in my hands. I look at the samples—— (through Interpreter) and I concluded that they were the same quality as the rolls that have been shown previously. (In English) And maybe I say, "Thanks, Mr. Grinstein." [506]

\* \* \*

Q. By that do you refer to the rolls that were in the Dulien yard? A. Yes.

Q. Did you tell him anything about the fact that this would be satisfactory, this type of wire?

A. (Through Interpreter): When I bought the wire and I signed the contract, it was because the samples were satisfactory.

Q. I show you a sample, one of the particular samples. That has what appears to be mud on it?

A. Yes.

Q. That was quite satisfactory with you, was it (interpreted)?

A. (Through Interpreter): As I saw the rolls of wire on the floor, I didn't particularly call my attention to the fact that they were slightly contaminated with mud.

(Testimony of J. B. Londono.)

Q. But you do observe there is mud on this sample, do you not? [507]

\* \* \*

The Witness (Through Interpreter): No, I could not determine whether that is mud.

\* \* \*

Q. (By Mr. Dasteel): Will you ask the witness, please in Spanish if by his mention of mud he refers to foreign matter sticking to the wire regardless of the ingredients, of what it comprises?

A. (Through Interpreter): When I see the mud, the mud on this wire, I don't know what type of mud it would be, because it also has grease attached to it. [508]

\* \* \*

Mr. Dasteel: May I ask that this particular piece of wire be marked Exhibit 36-1?

The Court: Surely.

(The article referred to was marked Plaintiff's Exhibit 36-1, for identification.) [509]

\* \* \*

Q. (By Mr. Dasteel): Now, Mr. Londono, I show you another one of the strands or pieces of barbed wire, and ask you to inspect it closely, and tell me whether or not you see anything that has the appearance of rust or red dust, and I want you to look at it just as closely as you did the roll on the other side of the courtroom.

A. (Through Interpreter): I did not observe



(Testimony of J. B. Londono.)

the wire under a microscope and just tested it for strength. [510]

\* \* \*

Q. (By Mr. Dasteel): Now, Mr. Londono, going back to the time that you received the exhibit No. 36 from Mr. Grinstein, the seven pieces of barbed wire, how was that handed to you, in a package or loose?

A. The samples were given to me in a piece of paper and checked them up.

Q. What did you do with this package, namely, the barbed wire samples that were in the piece of paper? Did you wrap it up in the same paper and tie it with string or just what did you do with it? [512]

\* \* \*

The Witness: On the 12th, on my way from Dulien's place after I signed the contract, Mr. Rendon and I stopped at some place, plumbing place——

The Interpreter: A plumbing establishment.

The Witness: Yes, in Fourth Street. (Speaking in Spanish.)

On my way from Dulien's place we stopped by a plumbing establishment on Fourth Street, in which place I knew an engineer to whom I showed the samples of the wire and told him of the transaction made, and showed him the contract, and he told me that it was satisfactory wire. [513]

\* \* \*

(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Now when you left Dulien's with the wire, did you throw it in an automobile or keep it in your pocket? How did you carry the wire right when you left Dulien's?

A. (Through Interpreter): In his hand.

The Court: Wrapped in a piece of paper?

The Witness: Yes, your Honor.

Q. (By Mr. Dasteel): Then when you went to this plumbing establishment where you showed the engineer the wire and the contract, you unwrapped the package and you put it out on the table, did you, and showed it to him? A. Yes.

Q. Did he handle these various pieces?

A. Yes. [514]

Q. How long did that take?

A. (Through Interpreter): We were there about 15 minutes.

Q. How many people in the office handled these pieces of wire? A. One.

Q. You mean that you just handed it to this engineer? A. Yes.

Q. And he handed it back to you? A. Yes.

Q. Then who else did you show these samples to?

A. One day between the 12th of July—during July I showed the samples to Hunt's engineer.

\* \* \*

The Court: Go ahead and tell him. You gave it to an engineer. Hans you mean is his first name?

The Witness: No, an engineer that work for Hunt's.

(Testimony of J. B. Londono.)

The Court: That worked for Hunt's?

The Witness: Yes. [515]

The Court: Oh, an engineer at Hunt's.

The Witness: Yes. (Through interpreter): He made an examination of the wire, and he also found it satisfactory.

\* \* \*

Q. When was the next time you showed these samples of wire to anybody?

A. It was to Mr. Bunn, during August.

Q. When was the first time that you showed the wire, the samples we are speaking of, to Mr. Bunn?

A. I don't remember the date, Mr. Dasteel. It was about—(through interpreter) in the second decade in August, that is, between the 10th and the 20th. [516]

\* \* \*

Q. Then did you leave the samples with Mr. Bunn, after you showed them to him?

A. Yes.

Q. Now, since that time do you know if these samples were handled or examined by others?

A. No, I don't know.

Q. Not to your knowledge? A. No.

Q. Did you bring them with you into court or did Mr. Bunn?

A. Together. I put the samples on Mr. Bunn's brief case,—to the court.

\* \* \*

Q. (By Mr. Dasteel): You put them in Mr. Bunn's brief case? A. Yes.



(Testimony of J. B. Londono.)

Q. Where were they when you picked them up to put them in the brief case (interpreted)? [517]

A. (Through Interpreter): Mr. Bunn took them from his safe, and it was in his office.

Q. After Mr. Bunn took them from his safe, did you open up the package and handle the wire again before you brought it into court? A. Yes.

Q. How many times would you say you did that?

A. One time.

Q. Was anybody present when you did that?

A. No.

Mr. Bunn: You mean besides me?

Mr. Dasteel: Yes. [518]

\* \* \*

Q. (By Mr. Dasteel): Mr. Londono, now going back—I [519] must go back to the 11th, that is, the date we were just referring to when these people were present. When you left Dulien's office on the 11th, you had discussed the price and quantity of the wire, had you not?

A. Yes, and accepted. [520]

Q. Then you told Mr. Grinstein that you would like to buy it, is that right?

A. Yes. I accepted to buy the wire.

Q. And Mr. Grinstein said to you, "Well, we will have to wait and see what Mr. Dulien has to say," is that right?

A. We closed the deal that day to confirm it the next day in writing.

Q. Did Mr. Grinstein say anything to you that

(Testimony of J. B. Londono.)

day about Mr. Dulien coming in the following day, meaning July 12th?      A. No, Mr. Dasteel.

Q. You didn't know that Mr. Dulien then was coming in on the 12th?      A. No, sir.

Q. You have just stated, I believe, that you were 99 per cent sure that you did not get the samples until the 12th, is that right?      A. Yes.

Q. Now, you just stated that on the 11th you confirmed an arrangement with Mr. Grinstein that you would buy the wire and that he would sell it?

A. Yes.

Q. Then you agreed to buy the wire orally, that is, by word of mouth, prior to the time—when I say “prior” I mean before—you saw these [521] samples?

A. No. I accept to buy the wire when I had seen the rolls of wire which were shown to me and when they promised to give me samples of that same wire.

Q. Is it your understanding, Mr. Londono, that these samples were taken from the wire that you saw in the yard at Dulien's on the 11th?

A. Yes.

Q. And Mr. Grinstein and you were agreed that you would return next morning on July 12th and enter into a written contract, is that right?

A. Yes.

Q. Now you arrived on the 12th, and who was present?

A. I told you before, Mr. Grinstein, Mr. Tuthill, Mr. Stinson, Mr. Rendon and I.

Q. Mr. Dulien wasn't there at that time?

(Testimony of J. B. Londono.)

A. Not at that time.

Q. Then did you have a conversation again with Mr. Grinstein about this wire?

A. More or less the same conversation as the previous day.

Q. But I want to know what was said on the 12th.

The Court: He just answered: More or less the same.

Q. (By Mr. Dasteel): Any change at all in the proposed purchase of wire as to terms or price from the previous day? [522]

A. No.

Q. Then Mr. Grinstein showed you Plaintiff's Exhibit 2, I believe it is, the sales order.

May I have that, Mr. Clerk?

(The document referred to was passed to counsel.)

Mr. Dasteel: Is there an original?

The Clerk: No. 2-A.

(The document referred to was passed to counsel.)

Q. (By Mr. Dasteel): Then, Mr. Grinstein handed you this document, entitled "Dulien Steel Products, Inc."?

A. Yes.

Q. "Sales order No. LA-712"?

A. (Speaking in Spanish.)

Q. You understand me?

A. Yes.

Q. Then you don't have to talk to the interpreter. You just answer.

He then handed you this?



(Testimony of J. B. Londono.)

A. Yes.

Q. Did you receive this and sign it before Mr. Dulien came to the office?      A. No.

Q. Did you receive this?

A. In Mr. Dulien's presence and I [523] signed——

Q. Just a minute.      A. Yes.

Q. Mr. Dulien was present when you were handed this sales order, is that right?

A. Yes.

Q. Now when this was handed to you, did you read it?      A. I suppose, yes.

Q. You do read English, don't you?

A. Yes. Not perfectly all right, but I read it.

Q. You read it?      A. Yes.

Q. Did you ask any questions of Mr. Grinstein or any member of the Dulien Steel organization that was present on that occasion regarding any of the matters set forth on this document?

A. No.

Q. You were quite satisfied with it, then?

A. (Through Interpreter): This I understood to be a confirmation of conversations on the 11th and 12th, and as I had confidence in the good faith of Dulien I didn't ask him to state that I have received samples as to quality.

Q. Did anyone connected with the Dulien organization discuss—that means talk about—or read anything set forth in writing on this document at that time?

(Testimony of J. B. Londono.)

The Interpreter: Would you state that [524] again?

Q. (By Mr. Dasteel): To make it plain, did any member of the Dulien organization talk about or read anything that is set forth in that document?

The Court: You mean aloud, read aloud?

Mr. Dasteel: Read aloud; yes.

The Court: In English, you mean?

Mr. Dasteel: In English; yes, your Honor.

The Witness: The only verbal conversation in connection was regarding the credit.

The Court: That is not an answer to the question. Did any member of the Dulien organization read that aloud to him in English before he signed it?

The Witness: No.

The Court: Did they read it to you in Spanish before you signed it?

The Witness: No.

The Court: Did you have a Spanish interpreter with you?

The Witness: Yes, your Honor.

The Court: Who?

The Witness: Mr. Rendon.

The Court: Did Mr. Rendon read it to you in Spanish?

The Witness: No, your Honor.

Q. (By Mr. Dasteel): Did you show this document to Mr. Rendon at that [525] time?

A. Possibly, yes.

Q. Was there any discussion at all between you

(Testimony of J. B. Londono.)

and any member of the Dulien organization regarding any of the matters set forth on this document at the time you signed it, either before or after or at the time?

A. There was no discussion whatever, only the statement I made regarding how credit would be opened.

Q. And by that you mean you did talk about the item set forth here under the subheading, "Terms"?

A. Yes.

Q. And you discussed that particular item there, which I shall read: "Letter of credit for \$160,000 now on deposit at Los Angeles Main Office of Citizens National Bank, subject of full draft on deposit of on board bills of lading, letter of credit for \$128,900 to be established on or before July 22, 1946, subject to draft on presentation of delivery receipts. Any railroad demurrage accruing due to non-establishment of letter of credit by July 22, 1946, will be for account of buyer." Is that what you talked about?

A. No. (Through Interpreter): The only verbal conversation was that the next day I would open——

Mr. Dasteel: Just a minute. What was that, the next day?

The Interpreter: Yes, the next day. [526]

Mr. Dasteel: What date, the 13th?

The Interpreter: That is what Mr. Londono said.

Mr. Dasteel: I don't understand it.

The Interpreter: Immediately. That I would



(Testimony of J. B. Londono.)

immediately open a letter of credit for \$160,000 now in the bank and several days afterwards I would open the credit for the balance which he mentioned, but I don't recall the figures.

The Witness: 128—— [527]

Q. Now, just a minute.

A. The 128,000——

Q. That discussion took place while you were referring to the subject in the sales order of letter of credit (interpreted).

A. (Through Interpreter): When Mr. Grinstein asked me how I was going to pay for the wire.

Q. Now, as a matter of fact, then you had this document in your hand and you read this matter here which I have just referred to, "Letter of credit," and you referred to this when you had this discussion regarding the letter of credit, did you not?

A. Yes.

Q. Then did you continue to read below?

A. I supposed to read everything.

Q. And you did? A. I suppose so.

Q. Did you not? A. I suppose so.

Q. But you do remember holding this and referring to the matter of letter of credit on there?

A. Yes, because Mr. Grinstein asking me how I going to pay, and I say I going to pay, I sign \$160,000 credit immediately and another credit for \$128,900 a few days later. [528]

Q. Then you talked about that item under the heading of "terms"? A. Yes.

Q. Did you talk about the heading "Commod-

(Testimony of J. B. Londono.)

ity?" Did you talk about that, where it says "Unused government surplus barbed wire as purchased by seller from Interior Department"? Did you talk about that?      A. On the 11th.

Q. Now, just a minute. He can answer that "Yes" or "No." I want to know if he talked about that item (interpreted).

Mr. Hubert Morrow: You mean on the 12th?

The Witness (Through Interpreter): Mr. Grinstein told me that the wire was obtained from the government of the United States, and that it was unused.

The Court: No. Is that what he said on that day, after you showed him the document? What he wants to know is whether or not with that document in front of you, Mr. Grinstein asked you about what the words were on that paper.

The Witness: Not in front of the document. The day before.

The Court: He says, "Not in front of the document."

Q. (By Mr. Dasteel): But when you received this document, you had it in your hands?

A. Yes. [529]

Q. Or you laid it on the desk?      A. Yes.

Q. And Mr. Grinstein was sitting there?

A. Yes, and Mr. Dulien.

Q. And Mr. Dulien, too?      A. Yes.

Q. You just testified you discussed under the item of "Terms," namely, the letter of credit. Did

(Testimony of J. B. Londono.)

you talk about any other of these items in connection with this document?      A. No.

Q. That's all you talked about?      A. Yes.

The Court: Was the condition of the wire mentioned that day at all (interpreted)?

The Witness: Yes.

The Court: What was said?

The Witness (Through Interpreter): I asked Mr. Grinstein about the condition of the wire, and he said that Mr. Dulien had seen the wire, and that it was in good condition, and that Mr. Dulien said that he would like to buy 50,000 more tons, or something like that.

Q. (By Mr. Dasteel): Now, I want to learn from you, Mr. Londono, is there any conversation that took place at the time you received this document, either before you signed it or at the time you signed it? [530]

Mr. Bunn: But on the 12th?

Mr. Dasteel: On the 12th, yes. You didn't see this until the 12th, did you?

The Witness: Yes, the 12th.

The Court: He just told you a part of it. You want more?

Mr. Dasteel: I want to get all I can about it, as to what was discussed in connection with this document.

Q. (By Mr. Dasteel): Now, was anything said at this time regarding the last two lines, which read as follows:

“Acceptance of material subject to rejection by



(Testimony of J. B. Londono.)

buyer of not more than 300 net tons due to excessive weathering."

Did you talk about that?

A. No.

Q. Did you ask any questions about it?

A. No.

Q. Did anybody talk to you about it?

A. No.

The Court: You mean on that day?

Mr. Dasteel: On that day.

The Witness: No, your Honor.

The Court: Had you talked about that 300 tons right of rejection the day before?

The Witness: No, your Honor. [531]

Q. (By Mr. Dasteel): Then do you recall any conversation regarding your option to refuse 300 tons due to excessive weathering?

A. No, not at that time.

Q. But when you read this, didn't you ask about it? If you hadn't discussed it before, when you read this, didn't you make any inquiry as to what was meant by that? A. No.

Q. Well, you took no action on it? A. No.

Q. But you knew it was there?

A. I supposed to read, but I—(through Interpreter) I didn't think that this contract would change any of the conditions and terms set forth in our conversation of the 11th above.

Q. What was the price quoted the day before, namely, July the 11th, by Mr. Grinstein,—how much a ton? A. \$108 a ton.

(Testimony of J. B. Londono.)

Q. \$108. And did you agree to pay \$108 a ton?

A. \$107 a ton.

Q. All right. That was on the 11th?

A. On the 11th.

Q. Now, the next day, the 12th, when you were presented with this document, did you notice the price here of \$107 a ton? [532]

A. Of course, yes.

Q. And you checked and that was all right?

A. Oh, yes.

Q. And did you notice the specifications shown on this order? Is that the same specifications? You checked that, did you not?

A. (Through Interpreter): Possibly, yes.

Q. You checked the quantity on this, did you not?

A. Yes. (Through Interpreter): The basic points of the contract were that it was galvanized wire, and it was 12½ gauge, and so forth.

Q. I know. I just asked him if he checked that on this contract. Now, the price shown on this contract is \$107 per ton, is it not? A. Yes.

Q. Now, if that had appeared as \$137 per ton, you would have made some objection to it, would you not? A. Of course, yes.

Q. All right. But the other parts of the contract, namely, the last two lines, "Acceptance of material subject to rejection by buyer of not more than 300 net tons due to excessive weathering,"—you didn't question that at all? A. Yes.

Q. "Yes" or "No." [533]

(Testimony of J. B. Londono.)

A. (Through Interpreter): I didn't put any attention on that particular part there.

Q. Is it possible you may have at the time, but now you don't remember?

Mr. Bunn: I object to that. That is a paradoxical question, and it calls for a conclusion. It asks him if something happened which he does not now remember. If he remembers it, then the question falls of its own weight. If he does not remember, then he cannot say it happened.

Mr. Dasteel: He was only 99 per cent sure that he got the samples on the 12th.

The Court: Objection overruled. Read the question.

(The question was read.)

The Court: That you may have said something about the 300 tons?

The Witness (Through Interpreter): I cannot say that I remember it.

Q. (By Mr. Dasteel): That is your signature, is it not? A. It is, yes.

Q. What did you do with this document, or the original duplicate copy which was given to you after you received it?

A. (Through Interpreter): I put it away some place in my possession until the 26th or 27th, when I turned it [534] over to Mr. Schroeder to ask him for the credit.

Q. Before you showed it to Mr. Schroeder, did you show it to anyone else? A. Yes.



(Testimony of J. B. Londono.)

Q. Who?

A. (Through Interpreter): To the man on 4th Street in the plumbing establishment, the engineer.

Q. Did you have any discussion with him regarding the various items set forth on this document?

Mr. Bunn: Just answer "Yes" or "No," please.

\* \* \*

The Court: Mr. Londono, the question is, "Did you have a conversation with this man?"

The Witness: Yes, sir.

The Court: About that document?

The Witness: Yes, your Honor.

\* \* \*

Q. (By Mr. Dasteel): Now, in this conversation with this [535] man, did you talk about the various specifications in the items set forth on this document?

\* \* \*

(The question was interpreted.)

The Witness (Through Interpreter): No, it was that we spoke about the quantity of the wire that was to be sent to Colombia, but we did not discuss any of the technicalities of the contract. [536]

\* \* \*

Q. After you left Dulien's office then you went with Mr. Rendon to the plumber and you showed it to the engineer at the plumbing establishment, and then the next time you revealed or showed this document to anyone was when you took it to the bank and presented it to Mr. Schroeder?

(Testimony of J. B. Londono.)

A. Yes, sir.

Q. Now, when you presented this to Mr. Schroeder, did you engage in a conversation and talk about any of the items shown on this sales order?

\* \* \*

The Witness: I don't remember to have any particular conversation with Mr. Schroeder about the document. I remember I gave him the document and I told him I bought from Dulien the wire. [538]

Q. (By Mr. Dasteel): Did Mr. Schroeder ask you any questions regarding this document?

A. Not that I remember, Mr. Dasteel.

Q. Did you leave it with Mr. Schroeder?

A. Yes, the 26th or 27th of July. [539]

\* \* \*

Q. Now, we have you at the bank with Mr. Schroeder, and I believe you entered into negotiations with him for a letter of credit. [540]

A. Yes.

Q. Then you testified that thereafter, on July 27th, you went to Dulien's office and delivered a copy of the letter of credit to the Dulien Company, is that right?

A. The original letter of credit?

Q. The original letter of credit. A. Yes.

Q. Who did you give it to, Mr. Stanley or Mr. Grinstein? A. I gave it to Mr. Grinstein.

Q. Did you have any conversation with him when you handed him a letter of credit?

A. Yes.

(Testimony of J. B. Londono.)

Q. What did you say?

A. I delivered to him the letter of credit and after he saw the letter of credit, he accepted, and I asked him for an option of 300 tons of barbed wire—(through Interpreter) I asked for an option on the balance of 300 tons of barbed wire.

Q. Now, Mr. Londono, first tell me——

The Court: Apparently he has not finished his answer.

Mr. Dasteel: Pardon me.

The Witness (Through Interpreter): I gave him the letter of credit. We talk about the wire going to South America, and I told him that I had done a very good business—— [541]

The Witness (In English): No. Excuse me. Big business.

The Interpreter: It was big business.

The Court: That that was big business for you?

The Witness: Yes, the amount of business.

The Interpreter: And he told me also that for him had been big business, and he mentioned at the time that he had bought the wire from the government at \$28 a ton.

Q. (By Mr. Dasteel): Was that the first time that you learned that Dulien had purchased this wire from the government at \$28 a ton?

A. I think it was the first time I knew for sure.

Q. When did you first know about the fact that this wire was purchased by Dulien for \$28 a ton? Was it last Monday or last week or a year ago?

The Court: He just got through answering that.



(Testimony of J. B. Londono.)

He said he thinks that is the first time he learned of it for sure.

Q. (By Mr. Dasteel): Is it your statement that on July 27, 1946, that Mr. Grinstein told you that Dulien had bought that wire for \$28 a ton?

A. Yes.

Q. You did not make that statement in your deposition that was taken on April 6, 1948. Have you remembered that since that time? [542]

Mr. Bunn: Was he asked any such question?

Mr. Dasteel: He was asked all of the conversation at that time, not only by myself but by other counsel.

The Court: Show him the questions in the deposition. That is not the way to impeach him.

The Witness: Mr. Dasteel — excuse me, your Honor.

The Court: There is no question pending. Objection sustained.

The Witness: At one time in the deposition——

Mr. Bunn: Just a moment. There is no question, unless you are answering the last one that he made.

Mr. Dasteel: If the witness would like to add something to his last answer, I would like him to do so.

The Court: Very well.

The Witness: In one time during my deposition two years ago I said that my Colombian friend, Hector Silva Herrera, mentioned to Mr. Fosvett in the bank the price of \$28. In other words, I stated

(Testimony of J. B. Londono.)

the fact that the wire had been bought for \$28 a ton.

Q. (By Mr. Dasteel): With further reference to your conversation with Mr. Grinstein on July 27th and the 11th and 12th, prior to that time you were told, were you not, that this wire was purchased from the government?

The Court: Let me have that question. [543]

(The question referred to was read by the reporter as follows:

("Q. With further reference to your conversation with Mr. Grinstein on July 27th and the 11th and 12th, prior to that time you were told, were you not, that this wire was purchased from the government?")

Mr. Dasteel: I will reframe it and make it clear.

Q. On July 11th and 12th and at any other time that you discussed this barbed wire with Mr. Grinstein, you were told that it was unused government barbed wire as purchased from the government, were you not?

Mr. Bunn: I object to that question. It is compound as to the dates to which it applies.

Mr. Dasteel: I will withdraw it to save time. I will ask it this way:

Q. Did Mr. Grinstein at any time tell you that the wire you were purchasing was unused barbed wire as purchased from the government?

A. (Through Interpreter): He didn't tell me

(Testimony of J. B. Londono.)

all those words, but he stated that it had been bought from the government.

Q. Now, on July 11th, did Mr. Grinstein on that date tell you that the wire he proposed to sell to you was unused government surplus barbed wire?

A. Not in particular. The negotiation was based on the [544] samples and also on the fact that it was purchased from the government.

Q. He told you on the 11th that this wire was coming from Honolulu? A. Yes.

Q. And that it was purchased from the United States Government, did he not? A. Yes.

Q. And he told you it was unused wire, did he not? A. Obviously, yes.

Q. Did he tell you how long the wire had been in storage at Honolulu? A. No.

Q. Did you ask him? A. No.

Q. Did you inquire at all about the age of the wire? A. No. [545]

Q. When did you first see some of the wire that was unloaded from the White Squall?

A. It was in the afternoon of July 29th, at Long Beach Pier 1-A.

Q. And was that—

The Court: I think we might have the afternoon recess.

(A short recess was taken.)

Q. (By Mr. Dasteel): Mr. Londono, I believe the last question was when did you first see any of the wire that was unloaded from the steamer



(Testimony of J. B. Londono.)

White Squall, and I think your answer was July the 20——

A. The 29th, in the late afternoon.

Q. When was the next time you saw any of the wire that was unloaded from the ship, the White Squall?      A. The next day.

Q. That was the 30th?      A. Yes.

Q. Did you go to the Citizens National Bank on the 31st of July?      A. Yes, sir.

Q. Referring to Plaintiff's Exhibit No. 11, which is the letter dated July 31st addressed to the Citizens National Trust & Savings Bank, I show you——

The Court: It has an exhibit number.

Mr. Dasteel: Yes, Exhibit No. 11. [546]

The Court: Oh, you did say that. I am sorry.

Mr. Dasteel: Yes, your Honor.

Q. (By Mr. Dasteel: I believe you testified that you wrote that letter and signed it and that is your signature; is that correct?

A. Yes, it is correct. (Examines letter.) Yes.

Q. And this contains an order, does it not, to make shipment of 1500 tons of barbed wire to Buenaventura, Colombia?      A. Yes.

Q. And 500 tons to Roldan y Cia., at Cartagena?

A. Yes.

Q. And you wrote this letter after you had seen some of the wire that was unloaded; isn't that correct (interpreted)?

A. After I saw a small quantity of the wire, and which wire was not identified as the one that was going to be assigned to me.

(Testimony of J. B. Londono.)

Q. Isn't it true that you testified that on July 30th, which was a Tuesday, you took some wire-cutting pliers down to the dock and took several samples of the wire, which you saw on the dock?

A. Yes.

Q. And the samples that you took you understood were from this wire, were they not (interpreted)? Ask him to [547] answer "Yes" or "No."

A. (Through interpreter): At the time Mr. Rendon took the samples, we didn't know whether the wire was going to be for us, or whether it was going to be for Gonzales and Blanco, and for that reason we did not use them.

Q. Do you still have the samples of wire which you stated you took from the dock, that we just talked about?      A. No.

Q. What did you do with them?

A. (Through Interpreter): Mr. Rendon had them in his car, and probably they just slipped away, because they didn't use them.

Q. Now, on July 31st, after you wrote the letter which is Plaintiff's Exhibit No. 11, which I have just referred to, you left that with the Citizens National Bank, or did you mail it? I show you the letter again.

A. Yes, I left it in the bank. I signed it in the bank and left it at the bank.

Q. You left it at the bank?      A. Yes.

Q. Whom did you leave it with? What is the name of the person in the bank that you left it with?

(Testimony of J. B. Londono.)

A. Mr. Schroeder or Mr. Powers in the Foreign Department.

Q. You don't remember which one? [548]

A. Probably Mr. Schroeder.

Q. Mr. Schroeder. Did you have any conversation with him at the time that you handed this letter to him? Did you say anything?

A. Not in particular. (Through Interpreter): He dictated the letter and asked me to read and to sign.

The Court: He dictated the letter?

The Witness: Yes.

Q. (By Mr. Dasteel): Did you read it after he dictated it? A. Yes.

Q. And did he say anything about the contents of this letter? A. Not that I remember.

Q. When I say "he" I mean Mr. Schroeder.

A. Not that I remember, Mr. Dasteel.

Q. What did you do then, after you handed this—signed this and handed it to Mr. Schroeder that day?

A. During that time in the bank?

Q. Yes, right then and there.

A. I made several things. I signed this letter. I signed a promissory note to the bank. I got from Mr. Schroeder the check for \$54,000 and more dollars. I received from Mr. Schroeder another letter.

Mr. Diether: What? [549]

The Court: Another letter.

The Witness: And a commercial invoice for 2,000 tons of barbed wire, and maybe I received



(Testimony of J. B. Londono.)

from him in the presence of Mr. Sweeney—in Mr. Sweeney's presence the bill of freight, which document at that time we called bill of lading. [550]

Q. Now did you give any instructions to Mr. Sweeney at that time about shipping some of this wire on the 31st?

The Court: You mean oral instructions?

Mr. Dasteel: Yes, orally.

The Court: Is not that the letter to Mattoon & Company?

Mr. Dasteel: No, this is not to Mattoon & Company, your Honor; this is to the bank.

The Witness: I repeated the instructions that I have given to Mr. Sweeney regarding the wire on the 29th, all of which I have given to the bank in the same sense.

Q. (By Mr. Dasteel): You repeated it to Mr. Sweeney, you told him to proceed with the shipment of this wire then?

A. I didn't tell him to stop the shipment, so obviously I told him to proceed with it.

Q. That was on the 29th and the 31st, too?

A. The 31st.

Q. But you said you already had given Mr. Sweeney some instructions on the 29th.

A. Yes, I asked him several times before to make the booking space.

The Court: Booking space on a steamer?

The Witness: Yes.

Q. (By Mr. Dasteel): Then you confirmed

(Testimony of J. B. Londono.)

these instructions with Mr. [551] Sweeney that you gave to the Citizens Bank in writing?

A. Yes.

Q. Now on August 1st—I show you Plaintiff's Exhibit No. 23—on the letterhead of J. B. Londono, dated August 1, addressed to Dulien Steel Products, Inc. Do you recall sending and signing that letter?

A. Yes.

Q. I draw your attention to the last paragraph which reads: "If the balance of the lot is in similar condition when discharged I must request the opportunity to renegotiate the original price paid for this merchandise." Do you recall writing that?

A. Yes.

Q. Now you asked for the opportunity to renegotiate, and then thereafter you met Mr. Grinstein at the ship and he agreed with you, he said, yes, you should have an opportunity to renegotiate, did he not?

A. Yes.

Q. Did you make any request thereafter for a renegotiation?

A. Yes.

Q. When?

A. During the month of August, and he refused.

Q. What time? What date in August?

A. I can't remember, Mr. Dasteel, but I am quite sure [552] it was in August.

Q. Was it the date that Mr. Grinstein used those famous words, "You have the wire, we have the money"?

A. No, it was another day. I don't remember.

Q. Was it before or after?

(Testimony of J. B. Londono.)

A. It was before. And he refused and he say because Gonzales and Blanco had picked the best wire.

Q. Did you make any written request after August 1st to renegotiate? A. No.

Q. Do you know what the meaning of the word "renegotiate" is? A. Yes.

Q. What does it mean, in your opinion?

A. In Spanish they speak of— (through Interpreter) it speaks for itself. In Spanish the word speaks for itself. To negotiate over again.

Q. To negotiate over again? A. Yes.

Q. That was your understanding then of that word? A. Yes.

Q. Now, Mr. Londono, when was the first time that you inquired about the original bill of lading?

Mr. Diether: From whom? [553]

Q. (By Mr. Dasteel): And from whom?

A. It was after the 24th of August.

Q. Was that after the date that you discovered you made a bad bargain in connection with the purchase of this wire?

Mr. Bunn: I object to that. I think that calls for a conclusion.

The Court: Sustained.

Q. (By Mr. Dasteel): When did you first realize or come to the conclusion that you had made a bad bargain in connection with the purchase of this wire?

Mr. Bunn: Just a moment. I object to that question. It calls for a conclusion and it is ob-



(Testimony of J. B. Londono.)

viously an attempt to get the witness to commit himself.

The Court: Objection sustained.

Q. (By Mr. Dasteel): Is it your contention that you did make a bad bargain in connection with the purchase of this wire?

Mr. Bunn: Same objection.

The Court: Same ruling; sustained.

Q. (By Mr. Dasteel): Is it your contention then that you made a good bargain in connection with the purchase of the wire? [554]

Mr. Bunn: I object on the same ground, and his contentions are set out in the complaint.

The Court: Objection sustained.

Q. (By Mr. Dasteel): Now you stated you first asked something about the original bill of lading on August 24th. Was that the date?

A. After August 24th.

Q. And who did you ask about it?

A. I was at Matson office in Wilmington—

The Court: Matson Navigation Company in Wilmington?

The Witness: Yes—asking for the documents relating to the shipment of the barbed wire. I was not asking to obtain the bill of lading, but I asked to see the bill of lading in order to know if some exceptions were marked. I was asking for the bill of lading not to obtain possession of the document, but to observe whether or not a notation or exception had been written on it.

(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): What circumstances prompted you to make an inquiry for the bill of lading?

The Court: From Matson?

Mr. Dasteel: From anybody.

Q. What aroused your desire to see a bill of lading?

A. The document I had in my hands was the freight bill and had no notation whatever, and I wanted to find out if the [555] bill of lading or the documents regarding the shipment had such a notation.

The Court: What made you think the bill of lading was at Matson's Wilmington office?

The Witness: Because Mr. Sweeney told me and suggest to me to go there to find it. I was with Mr. Sweeney at that time.

The Court: Did you go to the bank first?

The Witness: Oh, yes. I was in the bank the next day, your Honor, the 24th of August, and I saw Mr. Moran and asked him about the other documents.

The Court: That was the time you learned the bank had not gotten the bill of lading?

The Witness: Yes.

The Court: Or were advised the first time?

The Witness: Yes, your Honor.

Q. (By Mr. Dasteel): Did you have a discussion with Mr. Sweeney—when I say a “discussion” I mean did you talk to Mr. Sweeney—at that time about the bill of lading and, if so, what did you

(Testimony of J. B. Londono.)

say to him and what did he say to you about it?

A. Yes. In the morning of the 24th of August I went into Mattoon's office and asked Mr. Sweeney if he received from the bank other document different than the bill of freight that I show him in that occasion, and he told me [556] that the bill of freight is supposed to be the bill of lading and it was the only document received from the bank.

Mr. Diether: May we make a motion to strike that answer as not affecting the bank, hearsay testimony, purely between Mr. Londono and Mr. Sweeney.

The Court: You can reserve your right to strike it. [557]

Q. (By Mr. Dasteel): Did you inquire of Mr. Sweeney how he was able to secure possession of some of the wire for reshipment to Colombia, and what document he used to hand to the Matson Navigation Company to take delivery of some wire?

A. No.

Q. Did he tell you, or do you know?

A. No.

Q. You did instruct Mr. Sweeney to handle a reshipment of some of this wire to Colombia, did you not?

A. Yes; all the wire.

Q. All the wire. When was the first shipment made?

Mr. Bunn: You mean when did the boat leave?

Mr. Dasteel: Yes, that is one date.



(Testimony of J. B. Londono.)

The Witness: Yes. I think August 20th, 112 tons.

Q. (By Mr. Dasteel): What date did Mr. Sweeney remove some of the wire from the docks for shipment to Colombia?

A. It was about the 31st of July.

Q. About the 31st of July that they took physical possession of some wire and removed it from the dock for reshipment?

A. To Moore-McCormack Lines, yes, sir.

Q. Now, do you know what document or documents Mattoon & Company used to hand to Matson Company for the purpose of getting delivery of the wire at this time? A. No. [558]

The Court: Do you know whether or not they handed any documents to Matson Company?

The Witness: No, your Honor.

The Court: Did you ever receive any other document—Strike that. Did you give the commercial bill of lading—the commercial invoice to Mattoon & Company?

The Witness: No, your Honor. It was unnecessary.

Q. (By Mr. Dasteel): Now, you stated you were at the Citizens National Bank on July the 29th? A. No.

Q. Did you talk to Mr. Glenn Powers there at that time?

Mr. Bunn: On July 29th?

Mr. Dasteel: Yes.

Mr. Bunn: He didn't so state.

(Testimony of J. B. Londono.)

The Witness: July 31st.

Q. (By Mr. Dasteel): Were you in the bank on July the 29th? A. No.

Q. Were you in the bank on the 30th?

A. No.

Q. Were you in the bank on the 31st?

A. Yes.

Q. I show you Plaintiff's Exhibit 8-A on the letterhead or form of the Citizens National Bank. Said document [559] is dated July 29, 1946, addressed to J. B. Londono, and at the bottom there is a rubber stamp which reads, "Received from Citizens National Trust & Savings Bank of Los Angeles the within described enclosures," and there is a signature there that looks to me like "Londono." Will you tell me if that is your signature?

A. Yes, it is.

Q. When did you sign that?

A. It must be the 31st of July, when I went to the bank. I was not in the bank before the 31st.

Q. Then it is possible, of course, that this was typed up, and you signed it when you came in on the 31st? A. Yes.

Q. All right. Now, did you read this document when you received it? A. I suppose I did.

Mr. John Morrow: I am sorry. We can't hear you back here.

The Court: "I suppose I did."

Q. (By Mr. Dasteel): I call your attention to the fact that there is set forth there, "1 bill of

(Testimony of J. B. Londono.)

lading," and a star against the number 1, and a statement to the effect, "This payment has been made against the following documents which we enclose," and it says, "1 bill of lading" and "1 invoice evidencing shipment of: 2,000 tons Barbed [560] Wire." You recall signing and receiving a copy of this document, do you not?

A. Yes, and I remember——

Mr. Hubert Morrow: Pardon me. What was that question—signing?

Mr. Dasteel: Signing and receiving.

Q. (By Mr. Dasteel): What were you going to say about the bottom there?

A. And the last part of the letter, the asterisk, so marked, shows "Documents marked"—asterisk—"have been delivered to Mattoon & Co., as per your instructions and attached receipt."

The Court: Will the reporter read the answer, please?

(The answer was read by the reporter.)

Q. (By Mr. Dasteel): Now, at the time you signed this, did you make any inquiry regarding the bill of lading as set forth here, which the document states has been delivered to Mattoon & Company?

A. No.

Q. Then on that same day did you also receive your freight bill marked "Paid"?

A. Mr. Sweeney or I——

Q. You?

A. ——take the bill of freight, which was sup-



(Testimony of J. B. Londono.)

posed to be the bill of lading from Mattoon office.

We came to the bank. [561]

Q. I have got you to the bank already. I just want to know if you received a freight bill on the 31st.

Mr. Bunn: Let him answer. He is answering you.

The Court: Go ahead.

The Witness: We come to the bank, Mr. Sweeney and I, with the possession of the document that we call the bill of lading.

The Court: Which was the freight bill?

The Witness: The freight bill. Mr. Sweeney or I delivered the document to Mr. Schroeder, and after he required to get the endorsement from Dulien. He handed the document to me or Mr. Sweeney. In other words, we come to the bank with the document. We left the bank with the document after Mr. Schroeder required to have the endorsement.

Q. (By Mr. Dasteel): That was on the 31st?

A. The 31st.

Q. And you previously testified, I think, that on the 29th Mattoon & Company had already removed some wire from the dock?

A. Not the 29th. The 31st.

The Court: By the way, who typed that legend on the back of the bill of freight at Dulien's office? Mr. Sweeney?

The Witness: Mr. Stanley.

(Testimony of J. B. Londono.)

The Court: Mr. Stanley?

The Witness: Mr. Stanley in person. [562]

The Court: Mr. Stanley.

The Witness: Yes, your Honor.

Q. (By Mr. Dasteel): That was done in the office of Dulien, though? A. Yes.

The Court: And when Mr. Moran phoned you about the documents, did he tell you that Mr. Stanley was there?

The Witness: No, your Honor.

The Court: At the bank?

The Witness: No, your Honor. He say that "We have the documents from Dulien."

The Court: Oh, all right.

Q. (By Mr. Dasteel): Now, you also testified that you went to the Moore-McCormack pier to see some wire "that the day before we ordered removed from the Long Beach dock." That was July 30th, the day before. In other words, you went there on July 31st and saw the wire, and Mr. Sweeney accompanied you, and you told him to go ahead and ship it; is that right?

Mr. Bunn: I object to the question. It is entirely too comprehensive, and so much so that it is not understandable.

Mr. Dasteel: All right. I will withdraw it and I will put it in another way.

The Witness: Mr. Dasteel, I will ask you to make a short [563] question.

Mr. Dasteel: That is, I will ask another question.

(Testimony of J. B. Londono.)

The Court: The witness says, "Mr. Dasteel, I will ask you to make a short question."

Mr. Dasteel: A short question. [564]

Q. (By Mr. Dasteel): Did you go to the Moore-McCormack Pier on July 31? A. Yes.

Q. Was Mr. Sweeney with you? A. Yes.

Q. And did you see some wire there at that time? A. Yes.

Q. And did you tell Mr. Sweeney you shipped some of it to South America?

A. I say Mr. Sweeney, "Stop"——

Q. No. Wait a minute. I am just asking this question: Did you tell Mr. Sweeney to ship some of the wire to South America? You can answer that yes or no, I am sure.

The Court: Some of what wire?

Mr. Dasteel: Some of the wire that he purchased from Dulien that was on the dock.

The Witness: The first time I say "stop."

Mr. Dasteel: No——

The Witness: Yes.

The Court: That is on July 31?

The Witness: On July 31, when I saw the wire on the Moore-McCormack dock I said to Mr. Sweeney, "Stop. Don't ship that wire to Colombia."

But later on I asked him to order to segregate this wire and take the less bad and ship to Colombia. [565]

Mr. Dasteel: Will you read that answer, please?



(Testimony of J. B. Londono.)

(The answer referred to was read by the reporter as follows: "A. On July 31, when I saw the wire on Moore-McCormack dock I said to Mr. Sweeney, 'Stop. Don't ship that wire to Colombia.'")

"But later on I asked him to order to segregate this wire and take the less bad and ship to Colombia.")

The Court: You mean later that day?

The Witness: Yes, your Honor, maybe on our way to the office.

The Court: Very well.

Q. (By Mr. Dasteel): Did you at any time after July 31 consent or instruct—

Mr. Bunn: Which one?

Mr. Dasteel: Either.

Mr. Bunn: Will you ask them separately, please?

Q. (By Mr. Dasteel): Did you at any time after July 31 instruct Mattoon & Company to ship some wire subsequent to the time you told them to stop?

A. I told him to ship the wire when it was segregated, separated. [566]

Q. Then your answer is yes, you did tell him to ship some wire after you had previously told him to stop? A. Yes.

Mr. Dasteel: May I see Plaintiff's Exhibit No. 25, please?

(The document referred to was passed to counsel.)

(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Now you testified that a Mr. Hector Silva Herrera, a Colombia lawyer, was here in Los Angeles with you? A. Yes.

Q. On what occasions did he accompany you in connection with the purchase of this wire?

A. August 1, 1946, I informed to him about my transaction and—yes, and so on.

Q. Did he go with you to the bank?

A. He went with me to the bank several times.

Q. How many times did he go with you to the bank?

Mr. Bunn: To the bank?

The Witness: No, to the dock first.

Q. (By Mr. Dasteel): Oh, you are going to tell me occasions? A. Yes.

Q. Start all over again then.

A. He was in the Hotel Clark at the time I was there.

Q. Where? [567]

The Court: Hotel Clark.

The Witness: And he was Colombian, we were friends, and I talked to him about the transaction of the wire, and he and I and Mr. Rendon used to go to the dock to see the wire.

Q. (By Mr. Dasteel): How many times did Mr. Herrera go with you to the dock to see the wire?

A. I believe three times.

Q. What were the dates, do you recall?

A. I recall the first of August because I show him the copy of the letter I wrote to Dulien and

(Testimony of J. B. Londono.)

he asked me to take him to the dock to see the wire.

Q. Then did he go to the bank with you?

A. A few days later he went to the bank with me and talked to Mr. Fosvett.

Q. Mr. Herrera talked with Mr. Fosvett?

A. Yes.

Q. Did Mr. Herrera ever go out to Dulien's office with you?      A. No, I don't remember.

Q. Did Mr. Herrera ever talk to your attorney, Mr. Bunn?

A. No, not that I remember. Mr. Bunn, can you help me?

\* \* \*

Q. I believe you testified that in the early part of August or between—let us put it between August 10 and August 21—you were engaged in a sales campaign in order to sell the wire which you purchased from Dulien, is that correct?      A. Yes.

Q. And were you successful in selling any of the wire between those dates?      A. No.

Q. How much of the wire had you sold before August 10th?

A. I sold since July 1000 tons to Mr. Echavarria.

Q. That was before August 10th. Now after August 21st, how much of the wire did you sell? Do you recall? You stated you didn't sell any between the 10th and the 21st of August, and you have already testified what you sold to Echavarria before August 10th. Now what I want to know is



(Testimony of J. B. Londono.)

how much of the wire you sold after August 21st.

Mr. Bunn: You mean in this country or South America?

Mr. Dasteel: Any place. Sold. I don't care where he sold it.

The Witness: Mr. Dasteel, may I explain to you? The 1000 tons of wire it was sold before this transaction. [569]

Mr. Dasteel: You haven't answered my question.

Mr. Bunn: He is trying to explain an answer that he has given heretofore and I think he is entitled to do that.

The Court: Do you want to explain a previous answer?

The Witness: Yes, your Honor.

The Court: Very well. Go ahead.

The Witness: The 1000 tons of wire I sold before this transaction, this Dulien transaction. Then in order to complete that transaction I ordered to ship 1000 tons to Mr. Echavarria.

Q. (By Mr. Dasteel): You sold 1051 tons before August 10, is that right?

A. And before I buy the wire from Dulien. I sold 1000—

Q. I am talking about this particular wire that you purchased from Dulien. Now you sold 1051 tons before August 10, did you not?

Mr. Bunn: That isn't what he said.

The Witness: I sold 1000 tons of wire to Mr.

(Testimony of J. B. Londono.)

Echavarria before August 10 and before [570]  
July 11.

\* \* \*

Mr. Dasteel: You mean he sold it before he had 'it?

Mr. Bunn: He has already said he was under contract to deliver it and he got it from Dulien and he had to send a thousand tons. He has been very clear about it.

The Court: There is no question pending.

Q. (By Mr. Dasteel): I am trying to find out how much you sold after August 21st, that is all.

The Court: After August 21st how much he sold?

Mr. Dasteel: How many tons.

The Court: And shipped?

Mr. Dasteel: And shipped, yes.

Mr. Bunn: If you will distinguish between selling in this country and shipping to South America he will understand you perfectly.

Mr. Dasteel: He can split it up. He can tell me how many tons were sold in Los Angeles and how many on the outside.

The Court: How many tons did you ship after August 21, do you remember?

The Witness: May I make some figures, your Honor? It was 1051 tons less 112 tons.

The Court: In other words, you shipped 112 tons before August 21st?

The Witness: Yes, your Honor. [571]

Q. (By Mr. Dasteel): You sold altogether, did

(Testimony of J. B. Londono.)

you not, 2000 tons less your alleged shortage of 81 tons, isn't that right?

Mr. Bunn: Read that again to him, please.

(The question referred to was read by the reporter as follows: "Q. You sold altogether, did you not, 2000 tons less your alleged shortage of 81 tons, isn't that right?")

The Witness: And less the small quantities that were lost in moving and the four coils that are now in the court. [572]

\* \* \*

What you want to know is whether or not the witness knows how much wire was lost in the process of moving?

Mr. Dasteel: Yes, that is right.

The Court: Do you know that?

The Witness: Yes. 4.9 tons. About 5 tons.

Q. (By Mr. Dasteel): About 5 tons?

A. Yes.

Q. That was in the moving? A. Yes.

Q. Now do you know how much was lost in the pickling process?

The Court: If any.

Q. (By Mr. Dasteel): Yes, if any.

A. The 5 tons I told you before included all.

Q. The 5 tons covers it all? A. Yes.

Q. When did you first learn that all of your wire had [573] been removed from the dock, from the Matson dock?



(Testimony of J. B. Londono.)

A. I don't know the date. I don't remember. Mr. Gonzales and Mr. Bunn had the records.

Q. Did Mr. Sweeney of the Mattoon Company or anybody from the Mattoon Company, who were your shipping agents for you, inform you to the effect that—well, we have picked up all of the wire that we could find on the dock and have shipped it for you? A. No, Mr. Dasteel.

Q. When did you finally come to the conclusion that the wire that was available to you on the dock had all been removed or sold?

A. I was absent in Colombia when that took place so I don't know.

Q. When you came back from Colombia, did you go and see Mattoon & Company—I presume that is Mr. Sweeney that you always talked to in that company, is that right, Mr. Sweeney?

A. Yes, I saw Mr. Sweeney.

Q. Did you see Mr. Sweeney and have a conversation with him?

A. Yes, I had a conversation with him about a portion of barbed wire that existed at that time at the Moore-McCormack Dock.

Q. You saw Mr. Sweeney at the Moore-McCormack Dock? [574]

A. No, I saw Mr. Sweeney and he told me about a quantity of barbed wire supposed to be 30 tons existing at Moore-McCormack Line Dock.

Q. Did he say it was your wire?

A. He asked me to go there and to identify because the record, the documents, letter between

(Testimony of J. B. Londono.)

Matson and Mattoon & Company indicated that that wire was part of the wire purchased from Dulien.

Q. What did you tell him about it?

A. I was there and I saw the wire, and Mr. Sweeney told to me that the dock charges would be about \$700, which amount Moore-McCormack Lines will agree to forget about if we ship the wire to anywhere. [575]

Q. Did you look at the wire at that time?

A. Yes.

Q. How much was there?

A. Supposed to be 30 tons, but at the time of the shipment, after I saw the documents, I knew that there was 477 coils, 100-pound coils, and that is equal about 24 tons.

Q. Was this wire stored in the open, or was it in a warehouse?

A. In open place.

Mr. Diether: Where was it?

The Court: "In open place."

Q. (By Mr. Dasteel): Was it protected by a fence and a gate, or could anybody go in there and look at it (interpreted)?

A. (Through Interpreter): It was in an open place. It had no particular protection.

Q. It had no protection?

The Court: No particular protection.

Q. (By Mr. Dasteel): It had no particular protection. Did you have a watchman at any time guarding your wire?

A. No.

(Testimony of J. B. Londono.)

Q. That was when you came back from Colombia, wasn't it? A. Yes, April, 1947.

Q. What date? [576] A. April, 1947.

Q. April, 1947. Now, going back to August the 12th, you stated that you went to Pier 1-A in Long Beach and saw a Mr. Swanson from the firm of Toplis & Harding—that is correct, isn't it?

A. About the 12th.

Q. You said on the 12th. And you said to him at that time, and I read from your own testimony, "I, myself, told Mr. Swanson that I was the owner of the wire." Do you recall testifying to that?

A. Yes, because I pay for it and I know the bank paid for me.

\* \* \*

Q. (By Mr. Dasteel): Well, I believe you testified the first time that you raised the question of receipt of an original bill of lading was on August the 23rd, was it?

\* \* \*

The Court: That was when he talked to somebody who told him it was a freight bill and not a bill of lading. [577]

\* \* \*

The Witness: Koppel.

Q. (By Mr. Dasteel): What date was that, again? A. The 23rd of August, afternoon.

Q. The 23rd of August. Now, the next day was the 24th, and you had a conference with Mr. Moran at the bank? A. Yes.



(Testimony of J. B. Londono.)

Q. And you showed him the freight bill?

A. Yes.

Q. And asked him if he paid the credit to Dulien against that document?

A. Yes, I asked him that.

Q. That was your statement. Now, what did you tell him? What did he tell you, rather (interpreted)?

A. He told me that he paid the credit against the other document, a larger piece of paper.

The Court: That is "other document," Miss Reporter.

Mr. Diether: Did the witness respond then?

The Court: He said, "other document." It sounds like "all the document." It is "other document."

Q. (By Mr. Dasteel): Now, I show you Plaintiff's Exhibit No. 7, entitled "Original Freight Bill." Now, you [578] stated that Mr. Moran said that he paid on a document a little larger than that?

A. Yes, larger.

Q. And—— A. He don't say——

Mr. Bunn: Wait. Just finish your answer.

The Witness: He said, "Larger." He didn't say "a little larger." He just say "larger piece of paper."

Q. (By Mr. Dasteel): Did he indicate that the size might be about this size (indicating)? I am showing you now a copy of the bill of lading.

Mr. Bunn: I object as calling for a conclusion of the witness.

(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Showing you a copy of the bill of lading in this case.

A. He used the words "larger piece of paper," and nothing else.

The Court: What is that exhibit number?

Mr. Bunn: It is No. 7, for identification, that he was showing him—the freight bill.

The Court: No. 7?

The Witness: That is No. 7, your Honor.

The Court: I mean, what is that exhibit number, the bill of lading?

Mr. Dasteel: The bill of Lading? [579]

The Court: You said you were showing him the original bill of lading.

Mr. Dasteel: No, a copy of the original bill of lading.

The Court: What is the exhibit number?

Mr. Dasteel: It is not in evidence yet.

The Court: Let's mark it for identification.

Mr. Dasteel: Yes.

The Court: That will be Defendants'—how are we going to figure this out—it is going to be D for Dulien, Exhibit D-A, for identification.

(The document referred to was marked Defendants' Exhibit D-A, for identification.)

Mr. Bunn: Is this an original or a copy?

Mr. Dasteel: This is a copy. This is a copy from the office of Dulien.

The Court: Where is the original now?

Mr. Diether: I have it, your Honor.

(Testimony of J. B. Londono.)

Mr. Hubert Morrow: What is this going to be?

The Court: It is going to be "D" for Dulien "A"—Dulien's A, in other words.

Mr. Diether: Why don't you use the original?

Mr. Dasteel: I want to say the file shows that this copy of the bill of lading was attached to a letter, a carbon copy of a letter.

The Court: Are you testifying? [580]

Mr. Dasteel: Yes, for the record, your Honor.

Mr. Bunn: I move to strike the remarks of counsel.

Mr. Dasteel: Do I understand you are willing to accept this as an exhibit for identification?

The Court: If you are showing a document to some witness, it ought to be identified.

Mr. Hubert Morrow: May I ask that the statements of counsel as to what the document shows be stricken.

The Court: The motion is granted. Whatever document you showed the witness, if you indicated it was this size, that should be marked Exhibit D-A, for identification, so that everybody will know what the document is, particularly my brethren on the Appellate Court, and what you had in mind when you showed it to him.

Mr. Dasteel: I am showing the witness a copy of the bill of lading.

The Court: Hand it to the clerk. Just mark it "D-A" with a pencil now,—red, green, or any other color. [581]



(Testimony of J. B. Londono.)

The Court: Did Mr. Moran show you the freight bill, or did he have it in front of him?

The Witness: Yes, I gave him the freight bill. [582]

The Court: Which is the document? Is that it?

The Witness: Yes, it is, and he say, "No, I pay against other document, a larger piece of paper."

The Court: A larger piece of paper?

The Witness: Yes. He had in his hands this document.

The Court: That is Exhibit 7?

The Witness: No. 7.

The Court: All right.

Q. (By Mr. Dasteel): Did he say anything more about it? Did he indicate what was on the other document? A. No.

Q. That is all he said? A. Yes.

Mr. Dasteel: I am withdrawing this document, if your Honor please, that you had marked for identification.

The Court: Well, it will remain as marked for identification.

Mr. Dasteel: Inasmuch as you sustained the objection——

The Court: It ought to remain marked for identification since you have exhibited it to the witness.

Mr. Dasteel: That is all right.

The Court: It is just marked for identification. [583]

\* \* \*

(Testimony of J. B. Londono.)

April 26, 1950

Q. You shipped approximately 1,051 tons to South America, did you not? A. Yes.

Q. And you delivered some tons to the plant for pickling? A. Yes.

Q. And you are going to let us know the quantity on that? A. Yes.

Q. The balance of the wire that you purchased then was left on the dock, was it not? A. Yes.

Q. How many tons were left on the dock?

A. I suppose we left——

Q. What was the answer, please?

A. I suppose was left on the dock 950 tons. I supposed to have on the dock 2,000 tons. We moved from Pier 1-A, Long Beach, 1,051 tons, and I suppose was left the balance, but the records later showed that 81 tons were short.

Q. Now, what precautions did you take to safeguard the balance left on the dock?

A. I, personally, don't take any [593] precautions.

Q. You didn't take any?

A. But I don't know if Mattoon & Company or Matson Navigation or Transmarine Corporation take some.

Q. Did you give Mattoon any instructions to safeguard the quantity of material left on the dock?

A. Not in particular.

Q. Now, you testified that you expended the sum of \$3,000 as expenses while you were in Los Angeles in connection with the purchase and sale of this

(Testimony of J. B. Londono.)

wire, did you not?      A. Yes.

Q. Over what period did that cover?

A. From August the 1st until November.

Q. What time in November? What day?

A. Until the second week in November?

Q. The second week in November.

A. More or less. I am not sure about the date.

Q. Three months and a half?

A. I beg your pardon?

Q. Three months and a half?

A. More or less.

Q. And you testified that you paid \$3.50 for a room and \$7.00 a day for meals?      A. Yes.

Q. That is \$10.50 a day. That would be approximately \$300 a month, and three and a half times 300 is \$1,050. [594] How do you account for the difference between \$1,050 and \$3,000?

A. It was my calculation about the expenses here, and my time.

Q. How did you calculate it?

A. And my time.

Q. Your time?      A. Yes.

Q. Oh, that \$3,000 includes payment for your services?      A. Yes. [595]

Q. And how did you figure your services, so much per hour or so much per day?

A. Per month.

Q. How much a month?

A. My salary in Colombia is about 3,000 pesos a month.

Q. 3,000 pesos a month?      A. Yes.



(Testimony of J. B. Londono.)

Q. And interpreted into American dollars, how much would that be?      A. It is \$1,000.

Q. \$1,000 a month?      A. Yes.

Q. You qualified, according to your attorney, as an expert on wire. How many tons of wire have you purchased or sold during your business experience?

A. Before this transaction or including this transaction?

The Court: Altogether, his question is.

The Witness: About 5,000 tons of wire.

Q. (By Mr. Dasteel): Was all of that wire purchased in the United States?      A. Yes.

Q. And sold in Colombia?

A. Yes, with the exception of the quantity we sold [596] here, I sold here to Gonzalez & Blanco.

The Court: In this lot?

The Witness: In this lot.

Q. (By Mr. Dasteel): Did you ever sell any copper wire, barbed wire made of copper?

A. No, just galvanized wire and black wire.

Q. Are there any other types of barbed wire of different specifications than the barbed wire which is shown over there and is involved in this suit?

A. (Through Interpreter): More or less the same quality only the rolls are smaller.

Q. Now, the specifications on this particular barbed wire is 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals?      A. Yes.

(Testimony of J. B. Londono.)

Q. Do you know of any other wire of different specifications, and if so, what are they?

A. Yes. There is many other kinds of wire, no twisted wire and different gauge, 12 gauge, 13 gauge, 14 gauge, with one point every 2 inches, one point every 3 inches, one point every 4 inches.

Q. How is barbed wire weighed, by the yard or or the foot?

A. Always we used to buy the wire by the weight. We don't know the length of the coils because the length is [597] different according to the gauge.

Q. You don't know then just how it is weighed by the foot or the yard?      A. No.

Q. Now, the barbed wire which you sold to your customers in South America, did you sell the galvanized at one price and the black wire at another price, or did you sell it all at the same price?

A. (Through Interpreter): I only quoted and sold galvanized wire, but I delivered black wire and renegotiated the price.

Q. Now you stated yesterday, or the day before, I believe, or probably it was last Friday, that neither the Citizens National Bank nor the Matson Navigation Company made any efforts, as far as you knew, to send customers to you for the purchase of the wire. Do you recall that?

A. Yes, I testified that.

Q. Now, what efforts did you make to sell the wire?

A. I offered the wire to Colombia, Cali, Colom-

(Testimony of J. B. Londono.)

bia; I have taken people to the pier at Long Beach 15, 20 times.

Q. How many people did you make contact with in Colombia? [598]

\* \* \*

The Witness: I contacted three people in Colombia.

Q. What are their names?

A. Octavo Trujillo, Mr. Jorge Fajardo, and Mr. Echavarria. I asked him to take the balance of the lot and he refused to take it.

Q. About how many potential buyers of black wire are there in Colombia? A. No one.

Q. None?

A. Because I reported that the wire was [599] rusty.

\* \* \*

Q. (By Mr. Dasteel): That is not responsive to the question. I asked you how many potential buyers of wire, good wire, are there in Colombia.

The Court: Do you understand the question?

The Witness: Yes.

Mr. Bunn: Do you understand the word "potential," what it means?

The Court: Do you understand the meaning of "potential"?

The Witness: Yes.

The Court: What does "potential" mean?

The Witness: Potential means—(through Interpreter) to my knowledge all merchants in Colombia were willing to buy galvanized wire, new.



(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Now, what efforts did you make in Los Angeles to sell the wire, and how many people did you contact?

A. More than 12 people.

Q. Name them.

A. I don't know the names. People come to the office and say we know you have some wire in Long Beach. All right, I have some wire to sell. Then I take them down. They see the wire and they say we don't take it. It is very rusty. Many [600] people.

\* \* \*

Q. Then all you did in connection with your efforts to sell the wire you have testified to?

A. At one or several times with Mr. Sweeney of Mattoon & Company, he reported to me about people that wanted to buy the wire, and I agreed to take the people down the pier and show the wire.

Q. Now, you testified as to the market price of wire. What do you call the market price or value of wire? How do you arrive at it?

A. For the market price I mean the price that it was offered to me for good galvanized wire in Colombia, and people here in Long Beach offered me \$160, \$170, \$180 per ton for good wire, but I could not produce good wire.

On the black I knew the fact that the market value from Mr. Gonzalez's information.

\* \* \*

Q. (By Mr. Dasteel): Now, you testified with

(Testimony of J. B. Londono.)

reference to the condition [601] of the wire that you saw at the dock on many occasions and you stated that you observed it was rusty.

A. Yes.

Q. And you estimated that at one time 60 per cent was rusty and at another time 75 per cent was rusty, and in answer to a question of your counsel as to how you determined that you stated it was your calculation.

A. Yes.

Q. Do you recall that?

A. Yes. [602]

Q. Do you recall that? Now, just how did you calculate the percentage of rusty and non-rusty wire? Did you count the coils?

A. (Through Interpreter): I didn't count the coils. It was in my appreciation, by seeing the wire.

Q. Was the wire stacked up in piles?

A. Yes, about.

Q. How high? How many coils to a stack?

A. In some piles four and some piles five. In some places one.

Q. And how many deep?

A. (Through Interpreter): Very large lots.

Q. Then you could only see the top and the sides; is that correct?

A. Yes.

Q. And you had no way of determining the condition of the wire that was inside the pile or the stack?

A. No.

Q. Now, you testified last week under the interrogatories of your counsel that some of the wire you could break easily with your fingers?

A. Yes.

(Testimony of J. B. Londono.)

Q. And that was the bad rusty wire, that you testified to? A. Yes. [603]

Q. The same as Exhibit No. 51, I believe?

Mr. Bunn: I object to the last part of the question. He did not so testify.

Mr. Dasteel: No, I am asking you now.

Mr. Bunn: What are you asking?

Mr. Dasteel: If the bad rusty wire you testified you could break with your fingers was the type shown by Exhibit No. 52.

The Court: You can go over there.

Mr. Dasteel: This type (indicating)?

The Witness (Through Interpreter): There was a lot of wire that was in a poorer condition than this.

Q. (By Mr. Dasteel): Didn't you testify that these four exhibits were representative of all the wire?

A. (Through Interpreter): It was what I asked Koppel to take from the different piles, but there was some wire in still poorer condition than these four coils.

Q. Would you like to see if you can break that with your fingers?

Mr. Bunn: I object to that question. I think it is argumentative. It is certainly incompetent, irrelevant and immaterial. He might properly be asked whether he tried to break any wire down there himself, but to put him to a test in this court room I think is improper and out of order.

The Court: I think so. [604]



(Testimony of J. B. Londono.)

Mr. Dasteel: If your Honor please, the witness stated that much of the wire was so bad he could take and break it with his fingers, and he brings samples to show the poor wire, and to substantiate the statement he made he should be willing to perform it here and now.

The Court: The objection is sustained. How many rolls of wire were there all together,—55,000? Wasn't that what the bill of lading said?

Mr. Dasteel: Yes, about that. But, if your Honor please, it would seem obvious that the complaining witness would naturally, when he brings samples in, bring in the very worst that he could find.

Mr. Bunn: You expected me to do that and charged me with that the other day. You said that is what I do, but maybe I surprised you.

Mr. Dasteel: No, you didn't.

The Court: The witness' testimony stands in the record. [605]

\* \* \*

Mr. Diether: Your Honor, I cut a small piece of wire from roll No. 53.

The Court: We will tag it as 53-A.

(The cutting referred to was marked Plaintiff's Exhibit No. 53-A for identification.)

Mr. Dasteel: May I remove it from the court room and return it? I should like to take it with me for a short time.

The Court: Surely. Any objection?

(Testimony of J. B. Londono.)

Mr. Bunn: None, sir.

The Court: Very well.

Cross-Examination

By Mr. Diether:

Q. Mr. Londono, were you in the United States in 1946 prior to May 6th? A. Yes.

Q. When did you come to the United States first in 1946? A. In February or March, 1946.

Q. You can't fix any more definite date than February or March? [607] A. February.

Q. How long did you stay?

A. Two months, more or less.

Q. What date did you go back to Colombia?

A. One day in April.

Q. Then you returned again on May 6th?

A. Yes.

Q. When you were here in February, did you purchase any barbed wire? A. Yes.

Q. Did you purchase barbed wire which was then surplus barbed wire from the government?

A. Yes.

Q. How much barbed wire did you purchase?

Mr. Bunn: I object to that as immaterial, a separate and distinct transaction from this one here.

The Court: I suppose that would go to his qualification as to the weight of his testimony as an expert and is admissible on that ground only.

Mr. Diether: And also on his knowledge of barbed wire.

(Testimony of J. B. Londono.)

The Court: That goes to the weight of his testimony.

The Witness: Will you repeat the question?

(The question referred to was read by the reporter as follows:

("Q. How much barbed wire did you purchase?") [608]

The Witness: About 200,000 coils of 28-pound coils.

Q. (By Mr. Diether): 200,000 coils?

A. Yes.

Q. How many tons?

The Court: 28-pound coils?

Q. (By Mr. Diether): How many tons would that be altogether? You don't know how many tons you purchased?

A. I know how many coils. May I calculate?

Q. You didn't purchase it by the ton?

A. About 2,500 tons.

Q. Was any of that new?

A. It was unused barbed wire, surplus barbed wire.

Q. It was surplus barbed wire? A. Yes.

Q. And you bought it directly from War Assets Administration?

A. Yes, I paid direct to War Assets through the bank, but there was an agent in between.

Q. Did you pay for that wire through letters of credit purchased from the Citizens Bank?

A. Yes.



(Testimony of J. B. Londono.)

Q. How many letters of credit did you purchase?

A. Several; more than two. [609]

Q. Did Mattoon & Company act for you as shipping agent in connection with the reshipment of that wire to Colombia? A. Yes.

Q. And during that time you were acquainted with Mr. Schroeder in the bank? A. Yes.

Q. And did you know Mr. Powers at that time?

A. Yes.

Q. Mr. Emshoff?

A. I saw Mr. Emshoff but I had no contact with him.

Q. Did you know Mr. Moran at that time?

A. No. [610]

\* \* \*

Q. When you came to the United States in May you had one order for barbed wire from a client in Colombia? [611]

\* \* \*

The Witness: No, I have many requisitions and the object of my trip was to find wire. [612]

Q. When did you first have a fixed order from Mr. Echavarria in Colombia for 1,000 tons of barbed wire?

\* \* \*

The Witness: One day during June, 1946, International factors located in Los Angeles offered me galvanized barbed wire through Mr. Rendon.

\* \* \*

The Court: Did you understand the question?

(Testimony of J. B. Londono.)

The Witness: Yes, your Honor. I am answering. [613]

\* \* \*

Mr. Diether: I only asked for the date. I don't care about the preliminaries.

Mr. Bunn: I have forgotten what the real question was. The date of what?

The Court: The date when he got an order from Echavarria for 1,000 tons of wire.

Mr. Diether: Right.

Mr. Bunn: You may answer.

The Witness: I don't remember the date.

Q. (By Mr. Diether): Was it in June?

A. It was in June.

Q. Did you get any other orders between that time and July the 29th, 1946, for wire in Colombia?

A. No.

Q. Then on July 29, 1946, you only had one order for wire in Colombia? A. Yes.

Q. And that was from Mr. Echavarria?

A. Yes.

The Court: And that was for 1,000 tons?

The Witness: 1,000 tons galvanized barbed wire.

Q. (By Mr. Diether): Under what name does Mr. Echavarria operate?

A. On this particular transaction he operated in his own name, Alberto Echavarria. [614]

Q. Who is Roldan y Cia.?

A. Oh, they are brokers; like Mattoon & Company are in Los Angeles, for instance.

Q. Were they the brokers for Mr. Echavarria?

(Testimony of J. B. Londono.)

A. For Mr. Echavarria.

Q. Or was that firm your broker?

A. Mr. Echavarria's brokers. They are general brokers in Colombia.

Q. When you went to Dulien's office on July the 11th, 1946, did you have any discussion with any representative of Dulien in connection with the bill of lading by which the 2,700 tons of wire was being shipped from Honolulu to Los Angeles?

A. No.

Q. Did you have any discussion about a bill of lading—— A. No.

Q. ——for the shipment of that wire on July the 12th? A. Not in particular.

Q. Did you have any discussion with any representative of Dulien as to whether that wire was being shipped from Honolulu to the United States by a straight bill of lading or by an order bill of lading? A. No.

Q. Did you have any discussion as to whether that 2,700 tons of wire was being shipped on a clean bill of lading or [615] not?

The Court: Discussion with whom?

Mr. Diether: Representatives of Dulien.

The Witness: No.

Q. (By Mr. Diether): Neither on July the 11th or July the 12th? A. No discussion.

Q. Did you make any inquiry from any representative of Dulien on July 11th or July 12th as to the character of the bill of lading by which that



(Testimony of J. B. Londono.)

2,700 tons of wire was being shipped from Honolulu to Los Angeles?      A. No.

Q. Did any representative of Dulien on July 11th or July 12th represent to you that that 2,700 tons of wire was new?

A. It was like the samples they showed me.

Q. Just answer my question.

Mr. Diether: I will ask, if your Honor please, that the answer be stricken and the witness instructed to answer the question.

The Witness: We had no discussion about the new.

Mr. Diether: May the answer be stricken and the witness instructed to answer, your Honor, please?

The Court: He just answered.

Mr. Diether: May I hear the answer? [616]

(The answer was read by the reporter.)

Q. (By Mr. Diether): In other words, it was not represented to you as new wire?

A. Not from the mills.

Q. By anybody from Dulien? They didn't tell you it was new wire, did they?      A. No.

Q. Didn't you attempt to buy galvanized wire from Mr. Dulien, at first?      A. Yes, 1,000 tons.

Q. And he wouldn't sell it to you, would he?

A. He said he had to sell the complete lot of 2,700 tons.

Q. In other words, you had to take the whole lot in order to get any?

(Testimony of J. B. Londono.)

A. Yes, in order to have the 1,000 tons of galvanized wire that I need I had to buy the 2,700 tons from Dulien.

Q. Did he tell you that the 2,700 tons was going to be segregated, that this galvanized wire would be segregated in one lot and the black wire in another lot?

A. No. He told me the complete lot would be half galvanized and half black.

Q. And the galvanized and the black were all mixed up together in this one lot of wire?

A. No discussion about that. [617]

Q. You didn't have any discussion about that?

A. No.

Q. But you didn't understand that it was going to be segregated, did you, when you received it?

A. (Through Interpreter): I didn't take that into consideration.

Q. When you went to Dulien's office on July the 11th, did you have any discussion with anyone there in regard to the terms of payment?

A. Yes. I offer to pay——

Q. You were talking to Mr. Grinstein?

A. Grinstein. I told him I had on hand \$160,000 and that I will require money from Colombia for the balance. [618]

Q. Did he take that down? Did he write that down on a piece of paper? A. No.

Q. Go ahead. Tell us the rest of the conversation you had with him about the terms of payment on July 11.

(Testimony of J. B. Londono.)

A. Because it was late and Mr. Grinstein asked me back the next day.

Q. In other words, all you told him on the 11th was that you had a letter of credit for \$160,000?

A. Yes.

Q. And the balance of it you would have to get from Colombia?

A. From Colombia or from the bank here.

Q. Did you tell him that?

A. I suppose I tell him.

Q. You are not sure now?

A. No, I am not sure now.

Q. Was there any other discussion on the 11th about the terms of payment?      A. No.

Q. Did you have any discussion on the 11th about the date of delivery?

A. Mr. Grinstein told me that the wire is coming from Honolulu and—not in particular the date of delivery.

Q. You didn't know what date you were going to get it? [619]      A. No, not on the 11th.

Q. Was there any discussion about the description of the wire on the 11th?      A. Yes.

Q. What was said about that?

A. That half of the 2,700 tons would be black like the coils, the rolls, I saw in the yard, open place, in Dulien's, and the other half will be galvanized.

Q. Anything else about where Dulien bought the wire?



(Testimony of J. B. Londono.)

A. I understand from the government in Honolulu.

Q. And you understood it was surplus barbed wire? A. Yes.

Q. Did you discuss with Mr. Grinstein at that time how many barbs there would be?

A. I request at all times and I suppose at this time I request, too, 12 or 12½ gauge, 3 or 4 points, 3 or 4 inches, standard wire that was required.

Q. Did you discuss that on the 11th?

A. Possibly, yes.

Q. Anything else about the description of the wire?

A. No, I take in consideration the samples.

Q. Did you ask Mr. Grinstein when Dulien had purchased the wire? A. No.

Q. Did you ask him where it had been [620] stored? A. No.

Q. You knew it was surplus? Did you have any question in your mind as to how long it had been in the government's hands?

Mr. Bunn: I object to the question as incompetent, irrelevant and immaterial. He can testify what conversation took place, but what was in his own mind I think is immaterial.

The Court: Overruled.

Q. (By Mr. Diether): Answer the question, please. A. No.

Q. Did you know that the government was not selling any surplus wire until after the hostilities had stopped with Japan in August of 1945?

(Testimony of J. B. Londono.)

A. (Through Interpreter): It is possible that I knew it, but I didn't take that into consideration.

Q. You didn't know when the government started to sell barbed wire as surplus?

Mr. Bunn: I object to that as immaterial.

The Court: Sustained.

Q. (By Mr. Diether): Was there any discussion on the 11th about the rejection of 300 tons of wire for any purpose? A. No. [621]

Q. On the 12th, tell us what happened when you went to Dulien's office on the 12th. Who did you see first? A. Mr. Grinstein.

Q. Did you see him in his office?

A. In Dulien's office.

Q. And did you sit down at a desk?

A. I suppose so.

Q. Don't you remember?

A. I don't remember precisely. I had a seat at the time I signed the contract.

Q. Did you have any discussion with Mr. Grinstein about the terms of payment, how you were going to pay for this wire on the 12th?

A. Yes.

Q. Tell us what you said and what Mr. Grinstein said. A. I say that immediately——

Q. What? A. Immediately.

Mr. Bunn: Immediately.

Mr. Diether: All right.

The Witness: In other words, after that day I will open one credit for \$160,000 and several days

(Testimony of J. B. Londono.)

later I will open the balance of the credit for \$128,900, and he accepted. [622]

\* \* \*

Q. (By Mr. Diether): Was the \$160,000 letter of credit you were going to open immediately a different letter of credit than the \$160,000 you had from the bank at that time from Mr. Echavarria?

\* \* \*

Mr. Bunn: I object to that. It assumes a fact not in evidence. He hasn't testified that he then had a letter of credit from Mr. Echavarria. He said he had the money available, meaning in what form I don't know.

Mr. Diether: Mr. Londono has testified that he got a letter of credit from the bank in the early part of July for \$160,000.

The Court: In your question you framed it on the basis that he had a letter of credit from Mr. Echavarria. [623]

\* \* \*

The Court: The objection is sustained.

\* \* \*

Q. You had a letter of credit from the defendant bank for \$160,000, didn't you, when you went to Dulien's office on July 12? A. Yes.

Q. Is that the letter of credit that you were telling Mr. Grinstein about that you were going to purchase the next day?

A. It was the amount, \$160,000.

Q. But you were going to purchase another let-



(Testimony of J. B. Londono.)

ter of credit in the same amount?

A. Yes, with the same money.

Q. Have you told us all that you told Mr. Grinstein about the terms of payment on July 12?

A. In essence, yes.

Q. Was anything said about what Dulien would have to present in order to collect the \$160,000 on the letter of credit that you were going to purchase immediately?

A. No. [624]

Q. Nothing was said about that? A. No.

Q. And was anything said about what Dulien would have to present to collect the \$128,900 letter of credit that you were going to open in a few days?

A. No.

Q. You had no discussion about that at all?

A. No.

The Court: \$128,900?

The Witness: Yes, your Honor.

\* \* \*

Q. Did you have any discussion with Mr. Grinstein before you saw this sales order that he presented to you that day about what Dulien would have to present to the bank in order to collect the \$160,000 letter of credit that you were going to purchase, or the \$128,900 letter of credit that you were going to purchase in a few days?

A. (Through Interpreter): I have already answered no, and I again repeat no.

Q. Did you have any discussion with Mr. Grinstein on the 12th about the rejection of 300 tons of wire for any [625] purpose?

A. No.

(Testimony of J. B. Londono.)

The Court: Did you read this sales order before you signed it?

The Witness: Yes, your Honor. But I don't take it into consideration.

The Court: You do not take it into consideration as a conversation? What I am getting at is, did he just write this up and you did not say anything at all about it?

The Witness: I don't remember what conversation took place.

Mr. Diether: I can't hear you.

The Court: He says, I don't remember what conversation took place.

Q. (By Mr. Diether): What happened next after you had this discussion with Mr. Grinstein about the terms of payment on the 12th?

A. Mr. Grinstein dictate the letter of credit to Mr. Stanley.

Q. Right in your presence?

Mr. Bunn: The letter of credit?

The Witness: The sales order.

Q. (By Mr. Diether): Right in your presence?

A. I was in the office at the same time. [626]

Q. You heard him dictate it, did you?

A. I was in the office but I didn't follow every movement.

Q. But you were in the hearing of Mr. Grinstein's voice? A. Possibly, yes.

Q. Did you make any objection to anything he dictated to Mr. Stanley? A. No.

Q. You heard Mr. Grinstein dictate the portion

(Testimony of J. B. Londono.)

of this sales order which refers to the two letters of credit?

A. I was present but I didn't follow in detail.

Q. Was Mr. Rendon there with you at that time?

A. He was in the office at the same time.

Q. He was sitting right next to you?

A. I don't remember. [627]

Q. Was he in the room?

A. Possibly, yes.

Q. And you made no objection at that time to anything that Mr. Grinstein dictated to Mr. Stanley? A. No.

Q. Did you ask any questions about any of the matter which Mr. Grinstein had dictated to Mr. Stanley?

A. (Through Interpreter): My only interest was to know whether in the lot would be half galvanized and half black.

Q. That was your only interest?

A. Yes, and the good quality of the wire, of course.

Q. What did you do next, after you heard this dictation by Mr. Grinstein to Mr. Stanley?

A. At the same time—at that time Mr. Grinstein told me that Mr. Dulien was coming to the office, and he suggested to wait until Mr. Dulien come to the office.

Q. Did you just sit there in the office and wait until Mr. Dulien came?

A. Yes. Then we went to Mr. Dulien's personal



(Testimony of J. B. Londono.)

office, and we wait there until Mr. Dulien come to the office.

Q. How long was that?

A. Maybe 15 minutes.

Q. 50 minutes? A. 15 minutes.

Q. 15 minutes. [628]

A. I can't say how many minutes, but it was a while.

Q. When you went into Mr. Dulien's office, had you received the samples? A. I suppose so.

Q. When did you get the samples, with respect to this other matter that you have told us about?

The Court: What other matter?

Mr. Diether: The witness has testified that he went to the office and he was seated in Mr. Grinstein's office.

The Court: I know, but with reference to what other matter? You say "this other matter."

Mr. Diether: Well, the discussion he had with Mr. Grinstein in his office.

The Witness: I don't understand the question. Will you repeat it?

The Court: I don't either. Did you get the samples before you signed the sales order?

The Witness: Yes.

Mr. Diether: No. I want to find out this, your Honor: Did you get the samples before you went in to Mr. Grinstein's office, or during the time you were there, or when?

Mr. Bunn: Mr. Grinstein's office? You followed

(Testimony of J. B. Londono.)

him into Mr. Dulien's office. Are you going back to Mr. Grinstein's office?

Mr. Diether: He told us he had a conversation with Mr. [629] Grinstein when he first went to the office on July 12th. I want to know if he got the samples on that occasion.

The Witness (Through Interpreter): Probably, yes.

Q. (By Mr. Diether): Did you see them cut off of the rolls? A. No.

Q. They brought them in to you while you were in Mr. Grinstein's office in a paper? A. Yes.

Q. Did you have any discussion about them then (interpreted)? A. About the samples?

Q. Yes.

A. No. I take it. I saw the samples. I accepted them, the paper.

Q. And you wrapped them up and you put them in your pocket?

A. No, not in pocket. I had them in my hand.

Q. You held them in your hand?

A. Well, in my possession.

Q. You had them in your hand, then, when you went into Mr. Dulien's office?

Mr. Bunn: You mean private office? The whole thing is Dulien's office.

Mr. Diether: Private office, yes, sir. [630]

The Witness (Through Interpreter): Probably had them in my hand.

Q. (By Mr. Diether): Did you have any discussion about them? A. No.

(Testimony of J. B. Londono.)

Q. Was there any discussion in Mr. Dulien's office about the terms of payment?

Mr. Bunn: You mean private office now? If you will be kind enough to say "private office," because the whole office, as I say, is Dulien's. Even Mr. Grinstein's office is Dulien's office.

Mr. Diether: It is a corporation, isn't it?

Mr. Bunn: Please be as specific as you can.

The Witness: Please repeat the question.

(The question was read by the reporter.)

The Court: Do you mean Mr. Dulien's private office?

Mr. Diether: Mr. Dulien's private office.

The Court: In the interest of time-saving everybody has been referring to the whole statutory name as Dulien's.

The Witness: No discussion in Dulien's private office.

Q. (By Mr. Diether): When did you first see the sales order?

A. After Mr. Stanley brought the order.

Q. In whose office were you?

A. In Dulien's office, in the private office of Mr. [631] Dulien; Mr. Grinstein and Mr. Stanley's office.

Q. And was Mr. Rendon there?

A. Yes, he was there.

Q. And were these other two gentlemen?

A. Mr. Stinson and Mr. Tuthill.

Q. They were all there together? A. Yes



(Testimony of J. B. Londono.)

Q. How many copies did they bring in at that time?      A. More than two.

Q. Did you have a copy to look at?

A. I had a copy.

Q. Did Mr. Rendon have a copy to look at?

A. No. I don't know. Maybe my own copy.

Q. He looked at your copy?      A. I think so.

Q. Was there any discussion about the sales order at that time?      A. Not that I remember.

Q. Did you ask any questions about it?

A. I don't remember. I accepted the order. I signed the order.

Q. You read then under the terms of the sales order, which is Plaintiff's Exhibit 2, as follows:

"Letter of Credit for \$160,000.00 now on deposit at Los Angeles Main Office of Citizens National Bank [632] subject to full draft on deposit of on-board bills of lading."

You read that?      A. I suppose so.

Q. But you made no objection to anything there about the bill of lading?      A. No.

Q. You also read then in the sales order the material following that, which reads:

"Letter of Credit for \$128,900.00 to be established on or before July 22, 1946, subject to draft on presentation of delivery receipts."

You read that?

A. (Through Interpreter): It is possible that I read that.

(Testimony of J. B. Londono.)

Q. And you made no objection to it?

A. No. May I say this, Mr. Diether?

Q. Yes.

A. I signed the contract. Before I don't have any objections to make.

Q. Before you read it over? Before you signed it?

A. I suppose I read it and I signed.

Q. You also read, then, the last paragraph, which reads:

“Acceptance of material subject to [633] rejection by buyer of not more than 300 net tons due to excessive weathering.”

Did you make any objection to that?

A. (Through Interpreter): I suppose I read it, but I didn't make any objection.

Q. Did you ask any questions about it?

A. I don't remember any questions.

Q. And you had no discussion with Dulien, or any of his representatives, at any time on the 11th or the 12th of July, 1946, relative to the rejection of any quantity of the wire which you were purchasing, for any purpose?

A. (Through Interpreter): I don't recall having such discussion—(in English) in person.

Q. I believe you stated that you didn't know at that time, that is, July the 12th, the name of the boat on which this wire was being shipped to Los Angeles?

A. Repeat the question, please.

(The question was read by the reporter.)

(Testimony of J. B. Londono.)

A. No.

Q. You stated that you found out from Mr. Gonzalez?

A. Yes. At the time I signed the contract—(through interpreter) I didn't know—(in English) the name of the boat. But the same day or the next day, or the 14th, I saw Mr. Gonzalez. (Through interpreter) I knew that Mr. Gonzalez had purchased some wire in Honolulu, and I wanted to have an [634] option on his wire. Then I visited his office, and then I was told that the wire was coming on the White Squall. He didn't mention White Squall.

The Court: By Gonzalez?

The Interpreter: By Gonzalez.

Q. (By Mr. Diether): That is the same Gonzalez that is connected with Gonzalez & Blanco, that you refer to? A. Yes.

Q. Did you know that he had purchased the wire from Dulien?

The Court: You mean before he went there?

Q. (By Mr. Diether): I mean, or, I should say when he went there. When you went there, did you learn that? This is on July the 13th or 14th.

A. I don't remember if from Mr. Dulien, but from Honolulu I knew.

Q. You didn't know that he purchased it from Dulien?

A. I don't remember. If he told me, I don't remember.

Q. Did he tell you how much he was purchasing?



(Testimony of J. B. Londono.)

A. He mentioned that, yes. 1,500 tons of wire.

Q. Did he tell you the character of the wire?

A. Black wire and galvanized wire.

Q. He said he was buying both kinds?

A. Both kinds, yes. [635]

\* \* \*

Q. Did you know that Mr. Gonzalez's wire, that he purchased, was coming on the same boat that the wire that you had purchased from Mr. Dulien was coming on?

The Court: At that time?

Mr. Diether: Yes, at that time.

The Witness (Through Interpreter): I knew that the boat was coming from Honolulu on the 22nd, the day that Mr. Dulien had told me that the boat would be here, and I supposed that it was the same boat, and Gonzalez told me that in the same boat that his wire was coming from Honolulu some other wire was being shipped also, and I concluded that that would be Dulien's wire.

Now, Mr. Diether, I don't remember if Mr. Grinstein told me the name of the boat, but maybe he told me. I am not sure. I admit that maybe it was possible, but I don't remember.

Q. (By Mr. Diether): You went to Mr. Mattoon's office shortly after you signed that purchase order on July 12, didn't you?

A. Yes, I was at Mattoon's office.

Q. What day were you there? [636]

A. It was two or three days later.

(Testimony of J. B. Londono.)

Q. The sales order was dated on the 12th, which I believe was Friday.      A. That is right.

Q. Does that refresh your recollection as to when you went to Mattoon's office?

A. Maybe the next day.

Q. That was Saturday?

A. Possibly. And I told Mr. Sweeney that I will have some barbed wire to ship to South America. I inquired from him to make a space reservation.

Q. Did you tell him how much?

A. Yes, I told him 2700 tons of wire, that I would like to ship first one thousand tons to Mr. Echavarria in Colombia, but all the wire would be shipped to Colombia, and he had a conversation with Mr. Rendon, and I think he called Matson in order to know the exact date that the boat was coming, in order to make the space reservation.

Q. Is that all you told him on that day?

A. In essence, yes.

Q. Did you tell him that you were going to pay for it through a letter of credit purchased at the Citizens Bank?      A. No mention of that.

Q. Did you tell him you wanted him to accept the documents? [637]

A. (Through Interpreter): I told him that he would handle the shipments. [638]

\* \* \*

The Witness: At the time I was in Mattoon's office inquiring for the date the "White Squall" will arrive I don't give any particular instructions.

(Testimony of J. B. Londono.)

I say I will have some barbed wire I will ship to South America, please make reservation. But when I bought the letter of credit from the bank to Dulien in my conversation with Mr. Sweeney I gave him all these instructions, of course.

Q. (By Mr. Diether): Then you actually did give him some instructions before July 29th to accept the documents?

A. July 29th, July 30th, July 31st. [641]

Q. When did you give these instructions to Mattoon about accepting the documents from the bank?

A. It was by sure the 31st of July.

Q. What date? A. The 31st of July.

Q. Not before that date?

A. Not in particular that I can remember.

Q. You didn't do anything before the 31st?

A. Not in particular any instruction how to handle the shipments, just ship the wire to South America.

Q. But you didn't tell him to accept the documents before the 31st?

A. It is obvious he will accept the documents because he is going to handle the shipments.

Q. Then you instructed him to accept the documents from the bank? A. Obviously, yes.

Q. And that was before July 29th?

A. Before July 29th or July 31st.

Q. You purchased the letter of credit on July 27th, didn't you? A. Yes.

Q. Didn't you tell him immediately after that?

A. No.



(Testimony of J. B. Londono.)

Q. When did you tell him? [642]

A. The 31st.

Q. The 31st? A. Yes.

Q. That is the first time?

A. Possibly, yes.

Q. In your statement that I just read you on your deposition, you said you told him that on July 14th.

The Court: No, counsel. I am sorry. I just read the deposition. He said he told him that in July.

Mr. Diether: I withdraw that statement.

Q. When did you see Mr. Mattoon after July 4th?

Mr. Bunn: Mr. Mattoon?

Mr. Diether: Mr. Sweeney.

The Witness: I saw him very many times because we were friends, but in particular I saw him the 31st of July one day I went to his office.

Q. (By Mr. Diether): Did you see him——

Mr. Bunn: Let him finish his answer, please.

The Witness: And went to the bank with him on the 31st.

Q. (By Mr. Diether): Did you see him between July 14th and July 27th?

The Court: He said yes, he saw him many times.

Q. By Mr. Diether): Did he tell you that he had reserved space for 2700 [643] tons of wire?

A. I don't remember. The fact I remember, it was about the 31st, the only space available was Moore-McCormack boat to Cartagena and only 120

(Testimony of J. B. Londono.)

tons, and no other boat available at that time for Colombia.

Q. So on the 31st the only space that you had was for 120 tons? A. About.

Q. And he was endeavoring to get more space for you? A. Oh, yes.

Q. At that time you were intending to ship all of the 2000 tons?

A. Yes. He had required from Grace and from Moore-McCormack about space. In other words, he advised the shipping company that we would have the cargo for South America.

Q. On July 26th you received a letter from Dulien's office, didn't you? A. Yes.

Mr. Diether: May I see Plaintiff's Exhibit 3, please?

(The document referred to was passed to counsel.)

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 3. Is that the letter you refer to?

A. Yes, it is.

Q. I call your attention to this sentence in that letter, [644] it says, "We now have the bill of lading but upon inquiry at the bank find that there is no letter of credit available." When you saw Mr. Stanley on the 26th, did you ask to see the bill of lading? A. No.

Q. Did you ask him any question about it at all?

A. The only question I asked him in particular, it was——

(Testimony of J. B. Londono.)

Q. Just answer my question. Did you ask him anything about the bill of lading on the 26th when you went to see him?      A. No.

Mr. Bunn: I think he is trying to answer the question.

Mr. Diether: That is all I want to know.

Q. On that occasion is when Mr. Stanley told you that the shipment was not the 2700 tons but 2300 tons?      A. Yes.

Q. And you asked him if you could buy 2000 tons of the 2300 ton shipment?

A. At the first time I asked him if I could buy 1000 tons of galvanized wire, and I offered to pay to him any price, and he say no, he want to sell half galvanized and half black.

Then I inquired to have the right to buy 2000 tons.

Q. 2000 tons of the 2300 ton shipment?

A. Yes. [645]

Q. What did he say?

A. He say yes, you can get the credit or you can call Mr. Grinstein, supposed to be in Los Angeles that night.

Q. And you entered into no new written contract at that time, did you?      A. No.

Q. Did you have any discussion about the contract?      A. Not in particular.

Q. Did you assume that the contract that you had signed on July 12 was just merely amended so that the quantity instead of being 2700 tons would be 2000 tons?      A. Yes.



(Testimony of J. B. Londono.)

Q. Did you assume that any other provisions of that contract would be amended?

Mr. Bunn: I object to the question as calling for a conclusion.

The Court: It is indefinite. Objection sustained.

Q. (By Mr. Diether): Was there any other discussion about any other provision of the contract at that time with Mr. Stanley? A. No.

Q. Nothing was said about a right of rejection of 300 tons of wire for any reason?

A. No. He gave me the right to select 2000 tons from the 2300 tons. [646]

Q. Have you told us all the conversation you had with Stanley on July 26 when you went to his office?

A. All I remember.

Q. Did you thereafter go to Mattoon's office and notify him that the shipment was not going to be 2700 tons but 2000? A. I don't remember.

Q. When did you first tell Mr. Sweeney that the shipment was going to be 2000 tons instead of 2700?

A. By sure the 31st of July.

Q. That is the first time you told him?

A. The first time I remember. Maybe I told him before, but the first time I remember by sure.

Q. Was anything said by Mr. Stanley on the 26th that the wire was of the same kind that you discussed on the 12th?

A. It was said that at least I will find in the lot 1000 tons of galvanized wire.

Q. That was all that was said about it?

A. It is all I inquired, yes.

(Testimony of J. B. Londono.)

Q. It is all you inquired about?

A. Yes.

Q. And he didn't tell you anything else about it?

A. Not in particular. He gave me the assurance that it would be at least 1000 tons of galvanized wire.

Q. Nothing was said on the 26th about terms of payment? [647]

A. No. He asked me to get the credit for the next day or to call Mr. Grinstein the next day, but I went to the bank and made application for the credit.

Q. Did you refer to the terms of payment under your contract, your sales order, specifying a letter of credit for \$160,000 and one for \$128,900?

Mr. Bunn: That question has been asked and answered several times. I object to the repetition of it on that ground. [648]

The Court: I don't know when it was.

Mr. Diether: This is July the 26th in Mr. Dulien's office, when he was told for the first time that the shipment would not be 2700 tons, but 2300 tons. I am asking him——

The Court: If they had any discussion concerning the terms——

Mr. Diether: ——of payment. Correct.

The Court: At that time.

The Witness: I say that I will open the credit the next day for the complete volume of 2,000 tons; that is, \$214,000.

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): You said you would open a credit for \$214,000? A. Yes.

Q. That's all that was said? A. Yes.

Q. You went to the bank on the afternoon of July the 26th—— A. Yes.

Q. ——the first time in connection with this transaction?

A. Yes. It was the first time I talk about this transaction. I was there before, but Mr. Schroeder was out of the office.

Q. Did you sit down at Mr. Schroeder's desk?

A. Yes. [649]

Q. In the foreign department? A. Yes.

Q. And that's where you had your discussion with him? A. Yes.

Q. And no one else was present?

A. Mr. Rendon.

Q. Just Mr. Rendon, yourself, and Mr. Schroeder? A. Yes.

Q. At what time of day was that?

A. It was in the afternoon.

Q. What hour?

Mr. Bunn: If you know.

The Witness: It was after 1:00 o'clock. Maybe after 2:00 o'clock.

Q. (By Mr. Diether): And you told Mr. Schroeder at that time that you were purchasing 2,000 tons of barbed wire from Mr. Dulien at \$107 a ton? A. Yes.

Q. And you wanted to buy a letter of credit for \$214,000? A. Yes.



(Testimony of J. B. Londono.)

Q. And you wanted to turn in your letter of credit that you had issued to you in July?

A. Yes.

Q. And you wanted to borrow the difference?

A. Yes.

Q. Did you tell him how you were going to pay that loan?

A. Yes.

Q. How?

A. I told him that I will require a letter of credit from Colombia.

Mr. Diether: Just a moment. Did he say "require"?

The Court: Acquire.

Mr. Bunn: He says "require." That is his form of expression. He said he would require. That is what he consistently says and that is what I understood him to say.

The Witness (Through interpreter): I would ask for a letter of credit from Colombia. I was expecting to get a letter of credit from Colombia.

Q. (By Mr. Diether): Did you tell Mr. Schroeder anything about this letter of credit you were expecting from Colombia?

A. (Through interpreter): I have offers from Colombia up to a million dollars at that time, and, of course, it was easy.

Q. When did you tell Mr. Schroeder that you would secure this letter of credit from Colombia?

A. (Through interpreter): For the next week.

Q. The next week?

(Testimony of J. B. Londono.)

A. I told him I will have new credits the next week. [651]

Q. You were there on a Friday, and you would have it the following week?

A. Yes. "A week or two weeks," I think I say to him.

Q. Is that all you said about getting the letter of credit? A. I think so.

Q. All the negotiations with Mr. Schroeder at that time were in English, weren't they?

A. Yes.

Q. Mr. Rendon didn't have to interpret for you? You spoke to Mr. Schroeder in English, and he spoke to you in English?

A. Yes, but Mr. Rendon take a place in the conversation—(through interpreter) and possibly made it clear something that I did not understand.

The Court: In other words, you would have discussions with Mr. Rendon in Spanish?

The Witness: Yes, your Honor; always.

Q. (By Mr. Diether): Did you tell Mr. Schroeder at that time that Mattoon & Company was your agent for the reshipment of this wire?

A. Yes.

Q. Did you tell him that the shipping documents were to be delivered to Mattoon & Company?

A. I told him that Mattoon & Company will handle the [652] shipments.

Q. Did you tell him anything about the shipping documents?

(Testimony of J. B. Londono.)

A. When I said he will handle the shipments means that he will handle the documents, too.

Q. It means that he will handle the documents?

A. Yes.

Q. That was said on the 26th?

A. The 26th or the 27th.

Q. Was there any discussion with Mr. Schroeder on the 26th about the bill of lading for this 2,000 tons of wire?

A. Not in particular.

Q. Was it discussed at all on the 26th?

A. Our conversation took place on the basis that I wanted to buy one letter of credit for \$214,000 in order to buy barbed wire from Dulien; that I will give the bank \$160,000 that I had from Colombia, and that I wanted a loan for \$54,000 to complete the payment; that the barbed wire will be shipped to Colombia.

Q. Mr. Londono, I asked you, did you discuss with Mr. Schroeder on July the 26th anything about the bill of lading by which this 2,000 tons of wire was being shipped from Honolulu to Los Angeles?

A. I don't remember in particular, because Mr. Schroeder stopped the conversation—(through interpreter) [653] Mr. Schroeder considered that the transaction was feasible, but he would have to consult the next day with some higher officials.

Q. Have you told us all the discussion you had with Mr. Schroeder on July the 26th?

A. In essence, yes, and I remember I left with Mr. Schroeder the contract signed between Dulien and I.



(Testimony of J. B. Londono.)

Q. Did you go back the next day?

A. Yes, the next day, in the morning.

Q. What time did you go in the morning?

A. It was about 10:00 o'clock.

Q. Was Mr. Rendon with you? A. Yes.

Q. Where did you see Mr. Schroeder on that occasion?

A. At his desk in the foreign department.

Q. What did he say at that time?

A. He said that he agreed to open the credit, that he will charge me one-half per cent. I say, "This is a little high." I say, "I will ask you charge me one-fourth of one per cent." He agree. He ask me again when I will have money from Colombia. I say maybe in the next week, and that at the same time I had on hand the invoice to collect \$160,000 from the bank, and Mr. Schroeder agreed to open the credit. Then we start to make the application for the credit.

Q. Now, before you get to that, have you told us everything [654] up to the time you talked about the application (interpreted)?

A. I can't separate. (Through interpreter) I could not separate the conversation that took place before, when the credit was issued, or after the credit was issued.

Q. All that discussion you had with Mr. Schroeder was in English? A. In English, yes.

Q. Were you at Mr. Schroeder's desk the entire time you were at the bank that day?

(Testimony of J. B. Londono.)

A. Read me the question, please.

(The question was read by the reporter.)

A. No. After the application was made I left Mr. Schroeder's desk, and I waited in—(through interpreter) I waited in another place of the foreign department.

Q. But when you discussed the application, you were at Mr. Schroeder's desk?

A. Yes, and when he dictated the credit, I was at his desk, too.

Mr. Diether: May I see Plaintiff's Exhibit 4, please?

(The document was handed to counsel.)

Mr. Bunn: Is that the one he took away from the bank with him?

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 4, which is your application to the bank for a letter of credit [655] for \$214,000. You signed that on the day that you were there? A. Yes.

Mr. Bunn: On July 27th, he was there.

The Witness: Yes. Obviously, yes.

Q. (By Mr. Diether): And did you have a blank form to fill out prior to the time that you signed that document (interpreted)?

Mr. Bunn: For him to fill out, he said.

Mr. Diether: Yes.

The Witness: I don't remember.

Q. (By Mr. Diether): Wasn't it true that Mr. Schroeder filled out that form without any word from you what to put in it?

(Testimony of J. B. Londono.)

A. (Through interpreter): Mr. Schroeder prepared this form after my conversation with him. This is the result of that conversation. (In English) At the time I require for the documents a clean bill of lading, and, in addition, an order freight prepaid, insurance certificate, commercial invoice.

The Court: You told Mr. Schoeder all that?

The Witness: Yes.

The Court: Before he filled that out?

The Witness: Yes.

Q. (By Mr. Diether): Will you tell us exactly what you [656] told Mr. Schroeder at that time?

A. (Through interpreter): As I always do when I make an application for a letter of credit in Colombia, I write it on my own stationery, asking for clean bills of lading, insurance certificate, freight prepaid, and so forth.

Q. Do you remember distinctly telling Mr. Schroeder that you wanted a clean order bill of lading for the 2,000 tons of wire you purchased from Dulien? A. Yes.

Q. I call your attention to your testimony at the time your deposition was taken, beginning on page 234, line 12.

The Court: Do you have the deposition there? The reporter probably took it. Page 234, line 12.

Mr. Diether: Line 21, I should say.

The Court: 21 to where?

Mr. Diether: Let me find it exactly.

The Court: Well, it would be line 18, because that fixes the date.



(Testimony of J. B. Londono.)

Mr. Diether: Yes, sir; I think it does.

The Court: To page what, line what?

Mr. Diether: Just a moment. I think to line 16, page 235.

Mr. Bunn: I would like for the witness to have a copy of that before him.

The Court: I will give it to him. You begin to read [657] here (indicating) and read over to here (indicating), and after you have read that to yourself, you will indicate, and counsel will ask you a question.

Mr. Bunn: Read the balance of the page, too, if you will; all of page 235.

The Court: Have you finished reading?

The Witness: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Diether): On that occasion you testified as follows, starting at line 18:

“Q. Did you at any time in your discussion on July 26th with Mr. Schroeder say that you wanted a clean, order bill of lading?

“A. I don't remember the words I used, but obviously that was my intention, and that was what was done.

“Q. Why do you say it was obviously your intention?

“A. Because whenever I transact business involving maritime shipments or railroad shipments I make that one of the conditions.

“Q. But did you tell Mr. Schroeder”——

(Testimony of J. B. Londono.)

Mr. Bunn: Pardon me. That is "But you did" and not "did you."

Q. (By Mr. Diether, continuing reading): [658]

"Q. But you did not tell Mr. Schroeder on July 26th that you wanted a clean, order bill of lading on this wire you purchased from Dulien?

"A. Probably I did say that.

"Q. Do you remember distinctly that you told him that?

"A. I must have told him.

"Q. What did Mr. Schroeder say about that?

"A. Mr. Schroeder agreed to open letter of credit in accordance with the instructions in my application.

"Q. Who prepared the application?

"A. The bank. The bank always prepares these applications on their own forms.

"Q. Did you tell anyone what to put in that application for letter of credit?

"A. Obviously I must have told Mr. Schroeder."

You so testified at that time?

Mr. Bunn: Will you read the next two questions?

Mr. Diether: Yes.

Q. (By Mr. Diether, continuing):

"Q. When did you tell him?

"A. It must have been 26th of July or 27th of July.

"Q. Will you give us, as nearly as you [659]

(Testimony of J. B. Londono.)

can, the words you told Mr. Schroeder with respect to what documents you wanted the bank to secure before it paid that letter of credit?

“A. When I required of Mr. Schroeder, which textable, which actual words, I don’t remember, but they must have been used for my application for the letter of credit, or in.”

Mr. Diether: Is that what you want?

Mr. Bunn: Yes.

Q. (By Mr. Diether): What makes you positive now that you told Mr. Schroeder that you wanted a clean order bill of lading and at the time your deposition was taken you testified and said that obviously was what you told him?

A. My recollection now permit me to say.

Q. It has been refreshed, has it?

A. Yes. [660]

Q. What has refreshed your recollection?

A. My good memory.

Q. Is that all?

A. And my condition now, my physical condition now.

Q. In other words, you just remember now and you didn’t when your deposition was taken?

A. I beg your pardon?

Q. You remember now but you didn’t remember when your deposition was being taken?

A. I remember now, yes.

Q. Your deposition was taken at least a year ago, wasn’t it?



(Testimony of J. B. Londono.)

The Court: The date speaks for itself.

You have been thinking about this a lot? Have you been thinking about this a lot?

The Witness: Oh, yes, your Honor. Two years.

Q. (By Mr. Diether): Did you tell Mr. Schroeder on July 27th to deliver the bill of lading to Mattoon?

A. I told Mr. Schroeder that Mattoon will handle the shipments.

Mr. Diether: May the answer be stricken and may the witness be instructed to answer the question?

The Witness: I don't remember it in particular I say Mr. Schroeder to deliver Mattoon and Company the bill of [661] lading.

\* \* \*

The Witness: It was obviously known by the bank that Mattoon will handle the documents because the 29th, when the credit was made, the bank had drawn to Mattoon & Company the instructions.

Q. (By Mr. Diether): Do you now say you told Mr. Schroeder to deliver the bill of lading to Mattoon & Company on July 27? A. No.

Mr. Bunn: He did not so state.

Q. (By Mr. Diether): I call your attention to your testimony on page 119, starting with line 23.

The Court: Well, now, where before that will you pick up the date?

Mr. Diether: This is all I think a discussion of—just a moment.

(Testimony of J. B. Londono.)

The Court: This date is on the 31st of July, according [662] to page 117.

“Q. When was the next time you went to the bank after the 27th of July?

“A. On the 31st of July.”

That is the only date that is last mentioned before you come to this question on page 119.

Mr. Diether: If your Honor will note right in line 19 it says——

Mr. Bunn: What page?

Mr. Diether: Page 119, line 17: “Did you have an appointment with Mr. Sweeney for this occasion or do you know why he was in the bank?”

The Court: But that is July 31, according to the previous testimony.

Mr. Diether: Mr. Dasteel called my attention to page 115, line 20.

Mr. Hubert Morrow: Are you abandoning the other now?

Mr. Diether: No, I am not. He just called my attention to it as a date.

I don't believe that this question, your Honor, is directed to any particular time since your Honor will recall that this witness testified on his direct examination here, at page 261, line 3, that he never instructed the bank to deliver the bill of lading to Mattoon. And that is his testimony, as I understand it, from the record. [663]

The Court: The plaintiff introduced a document and marked it here, a letter, written July 31, Exhibit 11.

(Testimony of J. B. Londono.)

Mr. Diether: That is Exhibit 8.

The Court: Let me see it.

(The document referred to was passed to the Court.)

The Court: And all this testimony here and this conversation you are talking about now from the deposition relates to——

No, that is not the one. It is the one with the letterhead cut off.

(The document referred to was passed to the Court.)

The Court: This, according to the deposition, relates to a conversation on July 31, and if it is for the purpose of refreshing his recollection that is one thing, but if it is for the purpose of impeaching him it is not impeachment because he has not yet testified to the contrary of what appears in this portion of the deposition.

Q. (By Mr. Diether): Did you ever tell the bank to deliver the bill of lading for 2,000 tons of wire to Mattoon & Company?

A. When I say the bank that Mattoon & Company will handle the shipments, obviously I authorized the bank to deliver the bill of lading to Mattoon. I don't say in particular, "Mr. Schroeder, please deliver the bill of lading to Mr. Sweeney." I say that Mattoon will handle the shipments [664] and that means that they will handle all documents.

Q. Including the bill of lading?

A. Obviously, yes.



(Testimony of J. B. Londono.)

Mr. Diether: If that is the witness' testimony I don't care to——

The Court: That coincides with his testimony here.

“Q. Do you recall instructing a representative of the Citizens Bank to deliver to Mr. Sweeney the bill of lading or other documents involved in this shipment? When I say Mr. Sweeney I mean Mr. Sweeney or some other representative of Mattoon & Company.”

This is on page 119, line 23.

Then on page 120, line 2:

“A. I instructed to Mr. Schroeder of the bank to surrender the documents on this transaction to Mattoon & Company, to whom I would give specific instructions as to the shipments to South America.

“Q. When you say you instructed Mr. Schroeder at the bank to deliver the documents to Mr. Sweeney of Mattoon & Company, did you mean the bill of lading?”

Then objections.

“A. Documents; I said documents.

“Q. What documents did you have in mind?” [665]

More discussion. Then Mr. Dasteel asked:

“I want to know what he means by documents.”

Then the answer:

“A. Mr. Dasteel, we mentioned documents——

(Testimony of J. B. Londono.)

shipping documents, for instance commercial invoice, bill of lading, insurance certificate, bill of freight, railroad receipts.

“Q. In other words, you authorized Mr. Schroeder to deliver any documents involving the shipping of this merchandise to Mattoon & Company?”

“A. That’s right.”

Mr. Diether: You are reading from the deposition?

The Court: I am reading from the deposition.

Mr. Diether: Let me call your Honor’s attention to the testimony of this witness, which was taken on April 21, 1950, at page 261, line 3, question by Mr. Bunn:

“Mr. Londono, did you at any time by word of mouth as distinguished from by writing, instruct the bank to deliver the bill of lading to Mattoon & Company?”

“A. No, not that I remember.”

The Witness: Not in particular the bill of lading. I never used the word “bill of lading.” [666]

\* \* \*

Q. I show you Plaintiff’s Exhibit 5-A, which is the letter of credit guarantee. You signed that on July 27? A. Yes.

Q. And before you secured the letter of credit for \$214,000? A. At the same time.

The Court: At the same time, was the answer?

The Witness: Yes, your Honor.

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): And this is the same form of letter of credit guarantee that you had signed in the bank for the previous letters of credit that you had purchased in the early part of 1946?

Mr. Bunn: If you know.

The Witness: I suppose the same letter of credit.

Q. (By Mr. Diether): The same letter of credit guarantee you mean? A. Yes.

Q. Did you read it? A. No.

Q. Have you ever read it? [667]

A. No. Do you read the insurance policy, for instance?

The Court: What was that?

Mr. Bunn: Do you read the insurance policy, for instance?

Q. (By Mr. Diether): You never have read it?

A. No.

Q. But you didn't make any objection to signing it? A. No.

Q. At the same time you handed Mr. Schroeder this invoice to Mr. Echavarria in Colombia?

A. Yes.

Q. And that calls for a thousand tons of galvanized new wire? A. Yes.

Q. Why did you put in "new" wire?

A. Because——

Q. You weren't buying new wire from Dulien.

A. No make difference, new wire and unused wire.

Q. You don't think it makes any difference in the value?



(Testimony of J. B. Londono.)

A. The galvanized wire that Dulien show me, it looked new wire, brand new wire, and I supposed to have 1,000 tons of the same wire. [668]

\* \* \*

Q. (By Mr. Diether): Just before the noon recess I was asking you about Plaintiff's Exhibit 9, which is your invoice to Mr. Echavarria for 1,000 tons of galvanized wire. Did you ever send to Mr. Echavarria an amended invoice?

A. I sent it to him one copy of this invoice, with the correction of the date, 27th instead of the 24th, and I say, "This is a provisional invoice in order to collect from the bank \$160,000. You will have the right to—(through interpreter) to accept the price when the wire is received by you."

Q. Do you have that invoice? [670]

\* \* \*

The Witness: I don't know. I am not sure that I have.

\* \* \*

Q. I believe you stated this morning that it was always your practice when you purchased letters of credit to pay for merchandise which you were buying in this country to require an order bill of lading.

A. Yes.

Q. Is that your testimony?

A. Yes. Particularly on—

The Court: He said this morning when it was either shipped by boat or by rail.

The Witness (Continuing through interpreter):  
—particularly on shipments that were going from

(Testimony of J. B. Londono.)

one country to another; from one port to [671] another.

\* \* \*

Q. (By Mr. Diether): I show you Defendant Bank's Exhibits C-A1 and C-A2, which purports to be an application by you for a letter of credit from the defendant bank, dated February 26, 1946, and a copy of the letter of credit that was issued pursuant to that application. Does that exhibit C-A1 bear your signature? A. Yes, it does.

Q. Does that letter of credit call for an order bill of lading?

The Court: Is it a letter of credit?

Q. (By Mr. Diether): I should say an application for the letter of credit. As a matter of fact, it calls for a straight bill of lading, doesn't it, Mr. Londono? Just answer the question "Yes" or "No."

A. No. This letter of credit—this application was made on railroad shipments from the United States Government directly, which barbed wire I sold. I expected—I knew, with the Government, will be cheap, and I saw it was not necessary to require any special documents from the United [673] States Government because the material, it was inspected for me several times, and I knew that the material was from the Government.

Mr. Diether: May the answer be stricken and the witness instructed to answer the question?

Mr. Bunn: I don't think the answer should be stricken.

(Testimony of J. B. Londono.)

The Court: The document will speak for itself, and I think the witness is entitled to make a statement in connection with the document. The motion to strike will be denied.

Q. (By Mr. Diether): You also at that same time signed Defendant Bank's Exhibit C-A2, didn't you, on the reverse side, Mr. Londono?

A. Yes. It is my signature.

Q. And that is the letter of credit guarantee?

Mr. Bunn: On the other side, Mr. Londono. He is asking you to look at the back side of it.

Mr. Hubert Morrow: What exhibit do you call that?

Mr. Diether: That is defendant Bank's Exhibit C-A2.

Mr. Hubert Morrow: A-2?

The Court: C-A2.

The Witness: It is my signature.

Mr. Diether: C-A2.

The Court: "C" for Citizens Bank.

Mr. Hubert Morrow: I thought there was a C-A and a C-AB.

The Court: No. Exhibit "A" has two sheets, and so does [674] Exhibit B. So it is C-A1 and -2, and C-B1 and -2.

Mr. Hubert Morrow: Thank you very much.

Q. (By Mr. Diether): You signed that letter of credit guarantee? A. Yes, sir.

Mr. Diether: We will offer C-A1 as Defendant Bank's next exhibit.



(Testimony of J. B. Londono.)

The Court: Admitted.

(The document referred to, heretofore marked as Defendants' Exhibit C-A1 for identification, was received in evidence.) [675]

Q. (By Mr. Diether): I show you, Mr. Londono, Exhibit C-B-1 for identification, which purports to be your application to the defendant bank for a letter of credit, dated February 18, 1946. Is that your signature at the bottom of that paper?

A. Yes, in favor of War Assets Corporation. That means the United States Government.

Q. And that application calls for a straight order bill of lading, does it not?

The Court: A clean one?

Mr. Bunn: Straight order bill, Mr. Diether?

Mr. Diether: I should say straight bill of lading.

The Court: Clean straight?

Mr. Diether: Clean straight.

The Court: C-A-1 calls for a clean straight.

The Witness: Calls for the evidencing of 75,000 coils barbed wire, twisted, galvanized and unused for 1.28 yards the coil, each coil 28 pounds, and when it says the War Assets Corporation I mean the United States Government.

Q. (By Mr. Diether): Will you just answer my question? That application calls for a clean straight bill of lading, doesn't it?

A. The application call—yes.

Q. Yes.

I show you now Defendant Bank's Exhibit C-B-2

(Testimony of J. B. Londono.)

for identification, [676] which purports to be a letter of credit which was issued pursuant to the application which I have just shown you, and ask you if you have signed the letter of credit guarantee on the reverse side.       A. Yes.

Mr. Diether: We offer those as defendant bank's next exhibits in order.

The Court: Admitted.

The Clerk: C-A1 and 2, and C-B1 and 2.

(The documents referred to, previously marked Defendants' Exhibits C-A2 and C-B1 and C-B2, for identification, were received in evidence.)

The Court: Did you have your dealings in connection with these with Mr. Schroeder?

The Witness: Yes, your Honor.

The Court: Both of them?

The Witness: Yes.

Q. (By Mr. Diether): I show you, Mr. Londono, what purports to be your draft on the defendant bank for \$160,000. Did you sign that?

A. Yes.

Q. And you delivered it to the bank on July 27?

A. Yes.

Q. And that is your signature on the reverse side?       A. Yes, it is.

Q. Bearing the endorsement? [677]

A. Yes.

Mr. Diether: We will offer that as defendant bank's next exhibit.

The Clerk: C-C.

(Testimony of J. B. Londono.)

The Court: In evidence.

(The document referred to was marked Defendants' Exhibit No. C-C and received in evidence.)

Q. (By Mr. Diether): You received the letter of credit for \$214,000 about what time of day on July 27?

A. Between 10:00 o'clock and 12:00 o'clock.

Q. And then what did you do after you received it?

A. I went to Dulien's place and delivered the letter of credit to Mr. Grinstein in person.

Q. Was anyone with you?

A. Mr. Arturo Rendon.

Q. Did you have any discussion with Mr. Grinstein that day?

A. No, in this conversation I delivered to him the letter of credit, he saw the letter of credit, supposed to read the letter of credit, he accepted. I told him, "This is big business for me," and he say, "It is big business for me too."

Then I asked him for one option for the balance of 300 tons of wire, and he agreed to give me the option.

The Court: Had you seen any of the wire up to that time? [678]

The Witness: No, your Honor.

Q. (By Mr. Diether): Did you have any discussion about the bill of lading by which this 2,300



(Testimony of J. B. Londono.)

tons of wire was being shipped from Honolulu to Los Angeles with Mr. Grinstein on that occasion?

A. No.

Q. Did you ask anything about it?

A. No, because he saw the letter of credit.

Q. You have answered the question.

A. And made no objection to the correction of the letter of credit.

Q. But you had no discussion with him about it, did you? A. Not any in particular.

Q. Did you have any discussion with him about the right to reject 300 tons for excessive weathering?

A. No.

Q. You didn't discuss that? A. No.

Q. Didn't he tell you on that day that the "White Squall" had arrived the previous day?

The Court: Just a moment.

The Witness: That is right.

The Court: He wants to say something.

The Witness: He gave me the right to take the first [679] 2,000 tons of barbed wire.

Q. (By Mr. Diether): The best 2,000?

A. The first 2,000.

Q. The what?

Mr. Bunn: The first 2,000.

The Witness: The first. In other words, to take the first, to have the right to.

The Court: The first right to take 2,000 tons, is that what you mean?

The Witness: That is, your Honor. Thank you.

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): You mean that first 2,000 tons that came off the boat?

A. (Through interpreter): The right to have 2,000 tons before he take 300 tons.

Q. Did he say that you could have the best?

A. I don't remember if he in particular, we used that word.

Q. You don't remember that?

A. Not in particular. I had the right to take 2,000 tons and I supposed——

The Court: That you would have your choice?

The Witness: Choice, yes.

Q. (By Mr. Diether): Didn't he tell you on that occasion that the White [680] Squall had just arrived the day before?

A. I don't remember if he told me the day before. He told me that the White Squall, it was already in Long Beach.

Q. He told you that day?                      A. That day.

Q. You went down to the harbor that afternoon?

A. Yes, and I saw the White Squall.

Q. When was the next time that you had any conversation with any representative of the bank in connection with this transaction?

A. If Mr. Moran represented the bank, it was the 29th of July.

Q. When he called you on the telephone?

A. He called me on the telephone.

Q. What did he tell you then?

A. He told me, "Mr. Londono, this is Moran from the bank," and I recognized his voice, and said

(Testimony of J. B. Londono.)

that we have the documents from Dulien and we have the discrepancies that the documents—he used the word “documents”—showed 2,300 tons instead of 2,000 tons, and I said, “That don’t make any difference to me, I had an appointment with Dulien to take 2,000 tons, the credit was opened for 2,000 tons, no question about it.” Then I agreed to accept the documents showing 2,300 tons instead of 2,000 tons.

Q. You then told Mr. Moran that you had the right to [681] take 2,000 tons of the 2,300 ton shipment?  
A. Yes.

Q. Did Mr. Moran mention the fact that he had the bill of lading?

A. He mentioned the word “documents.”

Q. He didn’t say bill of lading?

A. Not that I can remember.

Q. I call your attention to your deposition on page 35, line 22, the question being at line 21.

A. (Examining deposition.)

The Court: Better begin reading at line 13 which indicates the date.

Mr. Diether: Yes, all right.

Mr. Laven: What page?

Mr. Diether: Page 35.

Q. Have you read it?           A. Yes.

Q. At the time that your deposition was taken, did you testify as follows:

“Q. Who did you talk to next, which one of the parties did you talk to?

“A. The next time it was Monday, the 29th of July. I was at the Hotel Clark—



(Testimony of J. B. Londono.)

“Q. Is that where you were residing at that time? [682]

“A. Yes—and Mr. Moran—I don’t know his first name—called me in the morning about 10:00 o’clock.

“Q. You mean Mr. Moran of the bank?

“A. Of the bank—and he told me that he had the documents from Dulien.

“Q. Did he say what documents he had?

“A. The first time he said the documents. He explained that the bill of lading show 2,300 tons instead of 2,000 tons, and he asked me about that difference between the letter of credit and the bill of lading. I answered that I agreed with Dulien to take 2,000 tons instead of 2,300 tons. No more then.”

The Court: “Ten minutes later,” is the rest of his answer.

Mr. Diether: I think that is correct.

Q. You so testified?           A. Yes.

Q. Does that refresh your recollection now that you did mention the bill of lading?

A. No. I said, I heard from him the word “documents” and my conclusion on this deposition is that he mentioned the bill of lading but I can’t say now, no make any recollection about the fact that he mentioned the word “bill of lading.” [683] It was my conclusion.

\* \* \*

Q. Which is the truth, that he did mention the bill of lading or that he didn’t?

(Testimony of J. B. Londono.)

A. My recollection and my intention is to say when I made this deposition that he used the word "documents." I don't remember if he used the word "bill of lading."

Q. Did Mr. Moran tell you who the consignee of this bill of lading was?

A. No mention about it.

Q. Didn't he tell you that it was a straight bill of lading in which Dulien was the consignee?

A. No.

Q. Did he call you again that same day?

A. Yes, about 10 minutes later.

Q. What did he say then?

A. He called me about this question, if necessary or convenient—I understood convenient; in Spanish we use the word "convenient"—to get from Dulien a letter specifying the fact that I will have 2,000 tons instead of 2,300 tons. I say I know it isn't necessary because my agreement with Dulien is that I will have the right to take 2,000 tons. I don't refuse his suggestion. I say I think it not necessary. [684]

Q. Did he mention the fact that it was a straight bill of lading in the second conversation, that the merchandise was consigned to Dulien? A. No.

Q. He didn't mention that at all?

A. Not at any time.

Q. Did Mr. Moran mention the fact that he told you that he already called Dulien? A. No.

Q. About this matter?

A. Not that I can remember.

(Testimony of J. B. Londono.)

Q. Did he say that he talked to Mr. Sweeney on the telephone about it? A. No.

Q. Or that he talked to Matson? A. No.

Q. Isn't it a fact, Mr. Londono, that on the first conversation, or the second conversation you had with Mr. Moran, you said, "I am in a hurry to ship this wire to Colombia and I don't want anything to hold up the shipment"?

A. (Through interpreter): I don't recall to have said anything like that.

Q. Did you tell him to accept the documents that he told you about?

A. I told him that no make difference to me, the fact [685] that the documents he mentioned shown 2,300 tons or 2,000 tons. Then obviously I admitted that he accepted the documents. [686]

Q. You told him to accept the documents?

A. No. I told him I don't care about the question that the documents show 2,300 tons or 2,000 tons.

Q. You didn't say anything about accepting the documents? A. No.

Q. Didn't mention that? A. No.

Q. Have you told us all now that Moran told about securing the letter from Dulien? Have you told us all the conversation that you had at that time with respect to what Mr. Moran said about getting a letter from Dulien to permit you to get 2,000 tons of wire?

A. I said that—I told him it was unnecessary, in my opinion, to get a letter from Dulien.

Q. Did he call that a turnover letter?



(Testimony of J. B. Londono.)

A. I don't remember that word.

Q. You don't remember that?

A. No. That word, I think, in translation—our conversation it was in Spanish, and that word, I don't know the translation in the Spanish, and he could not use that word.

The Court: There is no such phrase in Spanish?

The Witness: No. No, your Honor.

Q. (By Mr. Diether): Did Mr. Moran tell you that he was [687] going to pay the letter of credit for \$214,000 on the documents?

A. Not that I remember.

Q. When did you first learn that the bank had paid the letter of credit for \$214,000?

A. When I knew as a fact, the 31st of July.

Q. That was the first time?

A. Yes, that I knew.

Q. After Mr. Moran talked to you on the telephone on July the 29th, did you have any conversation with Mr. Sweeney that day?

A. I had conversations with Mr. Sweeney during the whole months of July and of August, and in particular I don't remember any conversation the 29th.

Q. Did you call Mr. Sweeney at any time on the 29th or 30th and tell him that the letter of credit had been paid and that the documents would be coming over soon, and to make arrangements to pick up this wire at Pier A?

A. Not in particular.

Q. You don't remember anything about that?

A. In particular, no.

(Testimony of J. B. Londono.)

Q. You went to the dock in the afternoon of July 29th, didn't you? A. Yes.

Q. How many coils of wire did you see [688] then? A. I saw small quantities.

Q. How many rolls?

Mr. Bunn: You mean, did he count it?

Mr. Diether: His estimate; his best estimate.

The Witness: I can't say how many rolls.

Q. (By Mr. Diether): Was it two or three thousand?

The Court: How much space did they cover?

The Witness: I can't say, your Honor. (Through interpreter): I saw wire on the pier. Could have been 100 rolls or 100 tons of wire. It was rather late.

Q. (By Mr. Diether): You went down again the next day with Mr. Rendon? A. Yes.

Q. And the Colombian lawyer?

A. Yes, Mr. Silva Herrera.

Q. How much wire did you see that day; that is, on July 30th? A. I don't remember.

Q. Was it more than you saw the day before?

A. (Through interpreter): I didn't try to establish any comparison between the wire I had seen the previous day. It is possible that there was a larger quantity if the discharge or unloading had proceeded.

Q. Can you estimate how many rolls?

A. No. [689]

Q. At the time your deposition was taken, I call your attention to page 196, line 13—

(Testimony of J. B. Londono.)

Mr. Bunn: Oh, that elusive copy of the deposition has eluded me again. I guess it is in the reporters' room.

The Court: Just a moment.

Mr. Diether: I will read from line 11 through line 13 on page 196.

The Court: Those few lines marked there (handing deposition to witness).

The Witness: Thank you, your Honor. Yes.

Q. (By Mr. Diether): Did you testify at that time as follows:

"A. The next day, July 30th.

"Q. What quantity of the wire did you see at that time?

"A. Several thousand coils. I don't know how many."

You so testified?

A. Yes. (Through interpreter): I cannot deny that testimony. It is possible that I said that.

Q. I couldn't understand what you said.

A. (Through interpreter): I cannot deny that testimony. It is possible that I said that.

Q. Were there any chalk marks on the dock at that time? [690]

A. Not that I remember, at that particular time.

Q. Did you know at that time that any of the wire on the dock was for Gonzalez and Blanco?

A. (Through interpreter): Yes, I supposed.

Q. Did you see anybody down there from Gonzales and Blanco?



(Testimony of J. B. Londono.)

A. No, Mr. Diether. It was about 6:00 or 6:30. I left the hospital the 30th very late.

Q. Did you make any inquiry at that time as to whether the wire that you saw was the wire which belonged to you?

A. No one person on the dock at that time. I don't make any inquiry.

Q. Did you make any inquiry at any time on the 29th and 30th of anybody on the dock as to which was your wire?

A. No people there on the 29th, at the time I was there. No people on the 30th.

Q. Did you see any rusty wire there on the 29th?

A. Yes.

Q. On the 30th?

A. Rusty, and galvanized, and black.

Q. Did you see any rusty wire on the 30th?

A. Yes.

Q. And you made no attempt to inquire whether that was your wire there or not?

A. No people there, Mr. Diether [691]

Q. You did not go down at any other time of the day?

A. No. I was in the hospital all day.

Q. Did you have any other business to look after in Los Angeles?

The Court: He said he was in the hospital.

Q. (By Mr. Diether): When were you in the hospital? A. I was in the hospital the 30th.

Q. On the 30th?

(Testimony of J. B. Londono.)

A. The 30th, during the day. (Through interpreter): July the 30th I was in the hospital.

Q. When did you get out of the hospital on the 30th?

A. (Through Interpreter): I didn't—I wasn't confined to the hospital. I was taking an examination.

The Court: What time did you get through?

The Witness: I don't remember, your Honor.

The Court: You went directly from the hospital to the pier?

The Witness: No, your Honor, because I had no car. I had come from the hospital to Mr. Rendon, and at the time he was available, it was about 5:00 o'clock, we went to Long Beach. I had no car at the time. I didn't know how to drive, how to go there, and it was late. I remember it was later than 6:30 in the evening.

Q. (By Mr. Diether): What time did the demurrage start on this 2,000 tons of wire of yours?

A. I beg your pardon?

Q. Ask him in Spanish.

The Interpreter: What is the question?

Q. (By Mr. Diether): When did demurrage start on your 2,000 tons of wire (interpreted)?

A. I don't remember. I don't know. I have not the records.

Q. Did you plan to leave all of your 2,000 tons of wire right on the dock until you could find shipping space to send it to South America?

Mr. Bunn: I object. It is immaterial what he planned to do. What he did is important.

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): All right. Did you make any arrangements for ground storage for this 2,000 tons of wire?

A. No, because we supposed at the time I bought the wire from Dulien that the wire will be good, and no troubles, not any delay to ship.

Mr. Diether: May the answer be stricken and the witness required to answer?

The Court: He answered it. He said "No," and then he explained his answer. The answer may not be stricken.

Q. (By Mr. Diether): On July the 30th, how much space did you have reserved for shipment to South America?

A. We had inquired for 2,000 tons, but the only quantity available at that particular day, it was 112 tons or 120 tons [693] to Cartagena.

Q. Then on July 30th all the space that you had available or reservation for to ship wire to South America was 120 tons?

A. (Through interpreter): It was a confirmed booking of 120 tons.

Q. And you didn't know when you could ship the balance?

A. (Through interpreter): I was expecting that I could ship all of it during the month of August.

Q. But you didn't make any arrangements to move it from the dock to ground storage?

A. (Through interpreter): Mr. Sweeney had



(Testimony of J. B. Londono.)

the power or my authorization to make all those arrangements.

Q. Did you instruct to do that?

A. Yes.

Q. Get ground storage? Did you instruct Mr. Sweeney to get ground storage?

The Court: What do you mean by "ground storage"? Covered storage?

Mr. Diether: No, any place other than on the dock where they charge demurrage.

The Witness (Through interpreter): We expected that the wire would be shipped before demurrage was caused.

Q. (By Mr. Diether): You didn't make any arrangements, [694] then, for moving the wire from the dock prior to shipment to South America?

The Court: At that time.

Mr. Diether: At that time.

The Court: Well, it is obvious he didn't. He said it in every other way that he can say it.

Q. (By Mr. Diether): Do you know what instructions Mattoon gave on July the 29th or 30th relative to picking up your wire at the dock in Long Beach?

Mr. Bunn: Answer "Yes" or "No," please.

The Witness: Not in particular.

Q. (By Mr. Diether): You don't know. Mr. Sweeney didn't tell you that he had given any orders to pick up wire on the 29th or 30th?

A. Not that I remember.

(Testimony of J. B. Londono.)

Mr. Diether: May I see Plaintiff's Exhibit 14 and 12?

(The documents were handed to counsel.)

Q. (By Mr. Diether): Did you have any discussion with Mr. Sweeney about making a shipper's export declaration for 2,825 rolls of wire to be shipped on the Mormacreed at any time on July the 29th or 30th?

A. Yes. I asked Mr. Sweeney to make export declaration on the basis of \$107.00 per ton, plus the freight, plus all charges here in Los Angeles.

Q. This is Plaintiff's Exhibit 14, for identification. [695] When did you first see that?

Mr. Bunn: Is that an original document?

Mr. Diether: It is a photostatic copy.

The Court: Do you want to know when he first saw the document?

Mr. Diether: The original of that document.

The Witness (Through interpreter): I never saw it. I never took time for that.

Q. (By Mr. Diether): You didn't ever see that document, the original of it?

A. I don't remember.

Q. Did Mr. Sweeney ever show you Plaintiff's Exhibit 12, which is a delivery order to Matson for 2,825 rolls of wire? Did he ever show you the original of that, or a carbon copy?

Mr. Bunn: That is marked for identification only.

Mr. Diether: Yes, that is right.

(Testimony of J. B. Londono.)

The Court: What number?

Mr. Diether: 12.

Mr. Bunn: My document No. 12, for identification.

The Witness: Not that I remember.

Q. (By Mr. Diether): Did he ever talk to you about it?

A. No. That thing, that is a mechanical thing of the brokers.

Mr. Diether: I didn't hear that last. Will you read it, [696] please?

(The answer was read by the reporter.)

The Court: By that you mean that is a regular course of business?

The Witness: Yes, your Honor. [697]

Q. (By Mr. Diether): You don't recall having any conversation with Mr. Mattoon—I mean Sweeney, of Mattoon's office—to pick up any wire at Pier A on July 29 or 30?

Mr. Bunn: I object to the question as uncertain and indefinite and ambiguous. Does counsel mean for the picking up on that day or does he mean having a conversation on either one of those days?

Mr. Diether: Did he have a conversation?

The Court: Will you re-ask the question, please?

Mr. Diether: Yes.

Q. Did you have a conversation with Mr. Sweeney of Mattoon & Company on July 29 or July 30, relative to Mr. Sweeney picking up any wire for you on Pier A?



(Testimony of J. B. Londono.)

A. I don't remember in particular any conversation.

Q. Do you know whether Mr. Sweeney picked up any wire on Pier A for you either on the 29th or 30th?

A. Not that I recall.

Q. On July 31, that was Wednesday?

A. Yes.

Q. And you said you went first to Mr. Sweeney's office?

A. I say by sure.

Q. Is that where you went first that morning?

A. (Through interpreter): That is the time I was sure that I was there. [698]

Q. And how did you happen to go to Mr. Sweeney's office on July 31?

A. Because we had a shipment on hand and because I usually went to Mr. Sweeney's office.

Q. Nobody had requested you to go to his office?

A. (Through interpreter): I myself took the initiative.

Q. Did you have any discussion with Mr. Sweeney at his office that morning when you first arrived?

A. When I went to Mr. Sweeney's office and he tells me that Mr. Schroeder from the bank wants to see me and wants to see him, too, then we together went to the bank.

Q. Did he discuss with you any documents that he had received from the bank?

A. He told me that Mr. Schroeder wanted, asking for the bill of lading in order to have the en-

(Testimony of J. B. Londono.)

dorsement from Dulien, and we take the document with us.

Q. Did he show it to you?

Mr. Bunn: What?

Q. (By Mr. Diether): Did he show you this document that he is talking about? A. Yes.

Q. I show you Plaintiff's Exhibit 7. Is that the document he showed you in this office that morning?

A. Yes. [699]

Q. And you took it out and looked at it?

A. Yes.

Q. What did you do with it, put it in your pocket? A. Possibly, yes.

Q. Was Mr. Sweeney there looking at it with you? You both looked at it together? A. Yes.

Q. Did you have any discussion about it?

A. No.

Q. Then you put it in your pocket?

A. In my pocket, or anyway in my possession, or Mr. Sweeney's possession, and we went to the bank and we delivered the document to Mr. Schroeder.

Q. Did Mr. Sweeney show you any other documents that morning when you went to his office?

A. Not in particular that I remember.

Q. I show you Plaintiff's Exhibit 20 for identification, which purports to be a letter to Mattoon & Company dated July 29, 1946. Did he show you that letter at that time when you were at his office?

A. This letter? No.

Q. When did you first see that letter?

(Testimony of J. B. Londono.)

A. I suppose I saw the letter the 31st of July, when Mr. Schroeder in the bank delivered it to Mr. Sweeney of Mattoon & Company. [700]

Q. You think you saw it in the bank?

Mr. Bunn: He said he supposed.

The Witness: I supposed.

Q. (By Mr. Diether): Was that later in the morning? A. The afternoon.

Q. The afternoon? A. Yes.

Q. Did you read the letter at that time?

A. I don't recall, Mr. Diether.

Q. Was it given to you?

A. Given to Mr. Sweeney I think.

Q. Did you ever have possession of it?

A. Not that I remember. I remember the fact that Mr. Sweeney asked me the authorization to pay the insurance charge for the—(through interpreter) fire insurance on the dock, and I accepted, and told me that it had been requested by the bank.

Q. Then you read the paragraph in that letter about insurance?

A. I remember this paragraph.

Q. You saw this part of the letter?

A. Yes. I suppose Mr. Sweeney called my attention to that point and asked me if he can go ahead and make the insurance and accept the bill.

Q. Did you read the first part of the letter also at that time? A. Possibly, yes.

Q. The first sentence in that letter reads as follows:

“We enclose herewith Matson bill of lading,



(Testimony of J. B. Londono.)

LA-29, covering 4,599,948 pounds barbed wire, 2000 tons of which are to be shipped in accordance with instructions of Mr. J. B. Londono, subject to our approval."

The next paragraph reads:

"You will note the bill of lading is consigned to Dulien Steel Products, Inc., of California, and we request that you obtain a release from them of the 2000 tons (the remaining 300 tons approximately to be released to their order)."

You read that at that time, didn't you?

A. I suppose so.

Q. Did you make any objection to it?

A. Not in particular.

Q. Then you knew at that time that the shipment, the bill of lading, was a straight bill of lading, didn't you?

A. (Through interpreter): Possibly I read that but the most important fact at the time was that Mr. Schoeder gave us the document to have endorsed by Dulien.

Q. That is the document, Plaintiff's Exhibit 7? [702]

A. Yes.

Q. Which you said you saw in Mr. Sweeney's office?

A. Yes, and take it to the bank.

The Court: Is it your position that this mentions a straight bill of lading?

Mr. Diether: Consigned to Dulien.

(Testimony of J. B. Londono.)

The Court: But it does not say anything about a straight bill of lading.

Mr. Diether: A straight bill of lading means being consigned to a definite consignee which makes it a straight bill of lading.

We will offer that Plaintiff's Exhibit 20 for identification as the bank's exhibit next in order.

The Court: Admitted. That will be——

The Clerk: C-D, your Honor.

The Court: ——C-D.

(The document previously marked Plaintiff's Exhibit 20 was received in evidence as Defendants' Exhibit No. C-D.)

Mr. Bunn: What was that original number that it had?

The Clerk: No. 20.

Q. (By Mr. Diether): Did Mr. Sweeney——

The Court: By the way, did you know whether or not Mattoon & Company got the approval of the bank on the shipments that they made? [703]

The Witness: Yes, they had the approval.

The Court: Do you know how he did it, each one?

Mr. Diether: I think, your Honor, that that will develop in the testimony a little later.

The Court: Very well.

The Witness: Mattoon was the agent for J. B. Londono and for the bank in order to protect the bank's interests.

(Testimony of J. B. Londono.)

Mr. Diether: May the last portion of the answer be stricken?

Mr. Bunn: I think he is answering the court's question.

The Court: It is his conclusion, but I have heard the testimony.

Q. (By Mr. Diether): Mr. Londono, did Mr. Sweeney at the time that you were in his office state that he had received a letter from Dulien authorizing Mattoon & Company to accept 2000 tons of wire for your account? A. Not that I recall.

Q. I show you—(addressing Mr. Bunn) is this a photostat?

Mr. Bunn: That is a photostat.

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 13 for identification, which is a letter from Dulien to Mattoon & Company dated July 29th. Have you ever seen the original of that [704] letter?

A. Not that I remember.

Q. You never have seen it at all?

A. Not that I remember.

Q. Mr. Sweeney never told you that he had such a letter? A. No.

The Court: Did I understand you to say that you saw this letter of July 29th on July 31st?

The Witness: Yes, your Honor; in the bank.

The Court: In the bank?

The Witness: And called my attention to it because the first paragraph about the insurance against fire. He told me one point, called my attention to it.



(Testimony of J. B. Londono.)

The Court: When you saw this letter, in whose possession was it, Mr. Sweeney's or Mr. Schroeder's?

The Witness: I suppose Mr. Sweeney's hands, your Honor.

Mr. Bunn: May I admonish the witness to say what he knows and not what he supposes.

The Court: Yes. Well your recollection?

The Witness: My recollection is it was in Mr. Sweeney's hands.

The Court: Had they delivered it to him in your presence or did he have it in his office and bring it to the bank with him? [705]

The Witness: No, it was delivered to him in my presence.

The Court: On the 31st?

The Witness: Yes, your Honor.

The Court: We will have the afternoon recess.

(Short recess.) [706]

The Court: How do you like your new home?

The Witness: I like it very much, your Honor, I have good company.

Q. (By Mr. Diether): When you were in Mr. Sweeney's office the morning of July the 31st before you went to the bank, did Mr. Sweeney tell you that he had any wire picked up at Pier A for your account, and taken over to Moore-McCormack dock?

The Court: What date was that again, please?

Mr. Diether: The 31st.

The Witness (Through interpreter): I have

(Testimony of J. B. Londono.)

not said that I was at Mattoon & Company on the morning of July the 31st.

Mr. Hubert Morrow: May we have that answer, please?

(The answer was read by the reporter.)

The Court: Go ahead.

Q. (By Mr. Diether): Didn't you talk to Mr. Sweeney on the morning of July the 31st before you went to the bank? A. It was about noon.

Q. Oh, about noon. All right. When you were in his office about noon on July the 31st, did he tell you that he had had any wire picked up from Pier A in Long Beach and taken to the Moore-McCormack dock?

A. I don't remember if he told me.

Q. You went there later in the afternoon, didn't you? [707] A. Yes.

Q. How did you happen to go there (interpreted)?

The Witness: Will you give me the question?

Mr. Bunn: "Why," I thought was the question.

The Court: "How" is what he said. How did you happen to go there?

The Witness: After our conversation in the bank, and after we obtained the endorsement of the bill of freight from Dulien—(through interpreter) we stopped in Long Beach and we probably were informed that some wire had been moved to Moore-McCormack, and we went to see it.

Q. (By Mr. Diether): Who informed you?

(Testimony of J. B. Londono.)

A. (Through interpreter): We stopped by at Long Beach Pier——(in English) on the way to Moore-McCormack Line. (Through interpreter): For some reason I don't recall, I knew that the wire was there, and I went to see it.

Q. But you learned it from Mr. Sweeney or at the dock on Pier A (interpreted)?

A. (Through interpreter): It is probable that it was through Mr. Sweeney.

Q. But you didn't know it prior to the time you went to the bank (interpreted)?

A. (Through interpreter): I had not seen the wire at Moore-McCormack.

Q. Did he know it was at Moore-McCormack dock before [708] he went to the bank (interpreted)?

A. (Through interpreter): I do not remember.

Q. Who is the first person that you talked to when you and Mr. Sweeney went to the bank on July the 31st?

A. I suppose it was Mr. Schroeder.

Q. Did you see him up at his office in the foreign department?

A. Yes.

Q. Was anybody with you besides Mr. Sweeney?

A. I don't remember if Mr. Rendon was with us.

Q. What was the first thing that you said or Mr. Schroeder said to you on that occasion?

A. Mr. Schroeder called my attention to the fact the day before, one or two days before, he had called me. (Through interpreter): Mr Schroeder called my attention that he had called me on one



(Testimony of J. B. Londono.)

or two occasions the day before and I had not been at the bank.

Q. Did he say why he called you?

A. Not in particular.

Q. What was the next conversation? What took place?

A. At the bank Mr. Schroeder taken me downstairs.

Q. You didn't sign any documents while you were in Mr. Schroeder's—

The Court: He hasn't finished. He said what took place, and that Mr. Schroeder took him downstairs. [709]

Mr. Diether: Before he went downstairs, I am inquiring: Did you sign any documents in Mr. Schroeder's office?

The Witness: I don't know if before go downstairs or after I signed the documents to the bank. I remember he took me downstairs, asked me to sign the promissory note, asking me for the check that he wrote, my own check, I signed a check for 54,000 and more dollars. He dictated downstairs—

Q. (By Mr. Diether): What was that last?

The Court: He dictated downstairs—

The Witness (Continuing, through interpreter): a letter which I did not hear dictated. (In English): After I signed the promissory note, and after I gave the check to Mr. Schroeder, we went on the second floor of the bank, on the floor where is located the foreign department, and I sign—

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): Signed what?

A. I signed a letter to the bank——(through interpreter) which I have identified here.

Q. Are you referring to Plaintiff's Exhibit 11?

The Court: How many times are we going to have that identified?

Q. (By Mr. Diether): That is the document you are referring to? A. Yes.

Q. Didn't you give that information that is contained [710] in that letter to Mr. Schroeder before he dictated the letter?

A. (Through interpreter): This letter was the result of what I talked to Mr. Schroeder, and, of course, represents facts that were admitted by me previously.

Q. You told him what to put in that letter?

The Court: I think he has answered the question, counsel, in his way.

Q. (By Mr. Diether): All right. What did you mean by saying in that letter that Mr. Mattoon was to pick out the best 2,000 tons of the 2,300 tons?

Mr. Bunn: We seem to be insistent, all of us, on creating a Mr. Mattoon. You mean Mr. Sweeney?

Mr. Diether: Isn't the letter addressed to Mattoon——Mattoon & Company?

The Witness: Yes. (Through interpreter): Because the best is the best.

Q. (By Mr. Diether): Did you think you had the right to pick over the 2,300 tons and pick out the best of it? A. Yes.

Q. And who gave you that right?

(Testimony of J. B. Londono.)

A. Mr. Grinstein gave me the right to take it the first time 2,000 tons, and, obviously, I will take the best of the 2,000, obviously.

Q. That is why you had "best" put in there?

A. That—maybe that word is what was used by Mr. Schroeder personally. [711]

Q. In this letter you direct that one shipment be made of 1,500 tons and another shipment of 500 tons. You do not specify in that letter that any portion of that is to be galvanized.

The Court: Do you have a question pending?

Q. (By Mr. Diether): Which one of those shipments was to go to Mr. Echavarria?

A. (Through interpreter): I didn't give the order to separate the galvanized from the black here because Mr. Echavarria would have the right to separate it in Colombia. The order to separate the wire here was because some was in bad condition and other in good condition, but not because of the fact that one was galvanized and the other black.

Q. Which was Mr. Echavarria to take his wire from, both shipments or from one shipment?

Mr. Bunn: I object to the question. It calls for a conclusion of the witness. It does not elicit a fact here.

Mr. Diether: He is claiming that he delivered to the bank an invoice for 1,000 tons of galvanized wire and he has handed to the bank the same day instructions—

Mr. Bunn: To ship all the wire.



(Testimony of J. B. Londono.)

Mr. Diether: —to ship one shipment of 1,500 and one of 500, and I am asking him if Mr. Echavarria is to select his 1,000 from both shipments or from one shipment. [712]

Mr. Bunn: You are asking Mr. Londono what Mr. Londono's intention was or what Mr. Echavarria's intention was?

Mr. Diether: He is shipping the wire.

The Court: What is your question? Are you asking this witness what Mr. Echavarria had in his mind or what Mr. Londono had in his mind?

Mr. Diether: Which one of those shipments was intended for Mr. Echavarria under your invoice which you delivered to the bank?

The Witness (Through Interpreter): My plans, my intention, was that Mr. Echavarria would take 1,000 tons of galvanized wire of all the wire I had shipped down there, and at the same time I was offering Mr. Echavarria the complete lot.

Q. (By Mr. Diether): Of 2,000 tons?

A. Yes.

Q. Did you sign that letter up in Mr. Schroeder's office or down when you were in the note department?

A. (Through Interpreter): I can't specify which place, but it was in the bank on that date.

Q. Did you see the letter which the bank wrote on that very date to Mr. Mattoon, or Mattoon & Company, directing them to ship the wire to South America as you had directed in that letter to the bank?

(Testimony of J. B. Londono.)

Mr. Bunn: I object. What letter are you talking about? [713]

The Court: I think you had better identify it by writing if it was a letter. [714]

\* \* \*

This will be marked for identification as C-E.

(The document referred to was marked Defendants' Exhibit No. C-E for identification.)

The Court: And it purports to be a letter?

Mr. Diether: A letter from the bank to Mattoon & Company.

The Court: Dated? [715]

Mr. Diether: July 31. It is, your Honor, a photostatic copy of a letter, the original of which I think is in Mattoon's papers.

\* \* \*

The Court: Do you want to use the original?

Mr. Diether: Has he got it?

Mr. Laven: Yes.

(The document referred to was passed to counsel.)

The Witness: (Examining document.) [716]

\* \* \*

The Court: The one that is marked for identification is C-E, and the one the witness now has in his hands, that is what you are interrogating him about?

Mr. Diether: I am asking him about the original which he now has in his hand.

(Testimony of J. B. Londono.)

The Court: What are you asking him?

Mr. Diether: If he saw that letter on July 31st.

The Court: Before it was sent or after?

Mr. Diether: It was handed, as I understand it, to Mr. Sweeney in the bank at the time that Mr. Londono and Mr. Sweeney were there.

Mr. Bunn: There is no evidence to that effect yet about this letter.

Mr. Diether: I am merely asking if he saw it on July [717] 31st.

The Witness: My recollection now is that I saw the letter in the bank and this letter made me a confusion with the other letter you asked me before, and I would like to see the other letter.

The Court: Exhibit No. 11?

The Witness: Yes, your Honor, please.

(The document referred to was passed to counsel.)

The Court: And C-D, the one of July 29?

The Witness: Yes, your Honor.

The Court: Show them both to him.

Q. (By Mr. Diether): I have handed the witness Defendants' Exhibit C-D and Plaintiff's Exhibit 11.

A. (Examining documents.)

Mr. Bunn: Does the witness also have now the one with Mattoon & Company's pen receipt on the bottom of it that he was asked about a while ago?

Mr. Diether: That is the photostat.

The Court: You do not have the original?



(Testimony of J. B. Londono.)

Mr. Diether: Apparently I can't find it in my file. I do have it and I will produce it.

The Court: Very well. In other words, at this moment the witness now has before him Plaintiff's Exhibit 11, Defendants' Exhibits C-D and [718] C-E.

Mr. Bunn: May it please the court, may the witness also have the photostatic copy that he has been asked about that shows the receipt on the bottom?

The Court: That will be C-E1.

Mr. Hubert Morrow: For identification?

The Court: For identification only.

(The document referred to was marked Defendants' Exhibit No. C-E1 for identification.)

The Witness: My recollection now, your Honor, is that I saw in the bank one or maybe the two letters the one point called to my attention was Mr. Sweeney's question about if I will accept to pay the insurance.

The Court: If you will agree to pay the insurance?

The Witness: Yes. These two letters are very similar. I can't recall by sure which one I saw at the bank on the 31st. After reading I conclude that the letter marked C-E is nearer to my letter to the bank dated July 31.

The Court: Exhibit 11?

The Witness: Exhibit 11. [719]

The Court: Now, what you mean to say is that you are not clear now that the testimony you gave

(Testimony of J. B. Londono.)

a while ago is true, that you saw the exhibit C-D?

The Witness: Yes, your Honor.

The Court: The letter of July 29th?

The Witness: Yes, your Honor. You are right.

The Court: That is, you do not now remember.

The Witness: It may be confusing, your Honor.

I can't say which one of these letters I saw.

Q. (By Mr. Diether): Did you see both of them?

A. On that particular occasion I can't say if I saw both. I saw one letter, and the one point it was the question about the insurance, a very similar to that, and, your Honor, I really can't say which one I saw.

\* \* \*

Q. (By Mr. Diether): Which one are you sure that you received that you saw? [720]

\* \* \*

The Witness: I don't know. One of these letters Mr. Sweeney called my attention, some one point of one of these letters about the insurance.

\* \* \*

The Court: I understood you to say that you are not sure whether you saw both of the letters?

The Witness: Yes, your Honor.

The Court: Your recollection is that you did see at least one or the other?

The Witness: Yes, your Honor.

The Court: The question that Mr. Diether asked

(Testimony of J. B. Londono.)

you related to whether or not you had received these letters.

The Witness: No one.

Q. (By Mr. Diether): Did you see either of these letters [721] while you were in the bank on July the 31st (interpreted)?

\* \* \*

The Witness: May I put it this way, your Honor. Mr. Sweeney in presence of one of these letters, or very similar letter, maybe there is a third letter or fourth letter, but similar letter writing to the bank by Mattoon & Company, asked me if I will pay the insurance for the barbed wire at the [722] dock.

\* \* \*

The Court: I understand the long and short of the witness' answer is that he saw a letter, shown to him by Mr. Sweeney, which had something in it about insurance, and that was called to his particular attention. Whether it was one or two of those letters he doesn't remember.

The Witness: I remember Mr. Sweeney in the bank—(through interpreter) on the counter—(in English) of the foreign department—(through interpreter) signed a receipt of a letter which could be one of these two letters.

Q. (By Mr. Diether): You don't know which one it is?

A. Now, I can't say that it was this one, because the signature is——

Q. And you are referring to C-E1?



(Testimony of J. B. Londono.)

The Court: Have you got the carbon of the other letter with the receipt on it? Obviously, the witness is confused, counsel. I mean our effort is to unconfuse him; not to confuse him any [723] more.

\* \* \*

The Court: Give him the photostat of one so that we can move along. Put the copies and originals in front of him. What you want to know is if he can tell which letter he saw; is that it?

Mr. Diether: That is correct. [725]

\* \* \*

The Court: All right. Now, the witness has in front of him C-D and Plaintiff's Exhibit 10, for identification, and C-E and Plaintiff's Exhibit 16, for identification. Is that correct?

Mr. Diether: That is correct.

The Court: All right. Now, your question is: With those four documents in front of him whether or not he can tell which letter he saw on July 31st. Is that it?

Mr. Diether: That is right.

The Court: Do you understand the question, Mr. Londono?

The Witness: Yes, your Honor.

The Court: All right.

The Witness: All I can say now is the same answer, referring to the originals, with the exception now in front the carbon copy that one has Mr. Sweeney's signature, with Mattoon & Company, Inc., rubber stamp, and the other one hasn't.

(Testimony of J. B. Londono.)

The Court: Well, are you still unable to say which one of those, if either of them, that you saw on July 31st?

The Witness (Through interpreter): I cannot say whether I seen one or two or a third one. All I can say is that I have seen a letter that contained a paragraph dealing with insurance, which I can identify.

The Court: All right. Let's get on to another subject. He has given us that answer now for 15 minutes. [726]

\* \* \*

Q. (By Mr. Diether): Calling your attention to the letter from the bank to Mattoon & Company, dated July the 29th, do you remember when you saw that letter the first time, if you don't remember seeing it in the bank on July the 31st?

\* \* \*

The Court: So his question is: When did you first see it? [727]

The Witness: As a fact, I saw the letter ten minutes ago here in the court.

The Court: And if I understand your testimony, you do not recall whether you have ever seen it before?

The Witness: Not for sure. May I say, your Honor, that Mr. Sweeney used one of these letters, or other similar letter, in order to obtain from me the approval of the payment of the insurance. [728]

\* \* \*

(Testimony of J. B. Londono.)

Q. Did you have any discussion with Mr. Schroeder at the time you and Mr. Sweeney went to the bank about the endorsement?

Mr. Hubert Morrow: What date?

Mr. Diether: On July 31st—

Q. —on the document which Mr. Sweeney handed you that morning and which was identified here as the freight bill.

The Court: Exhibit No.? [729]

Mr. Diether: 7

The Court: Your question was, did you have any discussion with Mr. Sweeney?

Mr. Diether: With Mr. Schroeder about securing that endorsement on July 31st.

Mr. Bunn: Mr. Londono, he is not referring to your deposition now; he has passed on.

The Witness: Oh. There is nothing about that?

Mr. Diether: For the moment I can't find the reference.

The Court: Read the last question.

(The question referred to was read by the reporter as follows:

“Q. Did you have any discussion with Mr. Schroeder at the time you and Mr. Sweeney went to the bank on July 31st about the endorsement on the document which Mr. Sweeney handed you that morning and which was identified here as the freight bill, Exhibit No. 7, about securing that endorsement?”)

The Witness (Through interpreter): I didn't



(Testimony of J. B. Londono.)

say that Mr. Sweeney gave me that document on that morning. That could be changed that I received it on that day.

The Court: What he means is, did you discuss it with Mr. Schroeder about getting the endorsement on the back of it.

The Witness: Yes, but he asked me.

The Court: If you did it in the morning. [730]

The Witness: Yes.

The Court: What is the difference, morning or afternoon?

The Witness: In the discussion Mr. Schroeder asked to have the endorsement from Dulien.

Q. (By Mr. Diether): Was Mr. Sweeney with you then? A. Yes.

Q. Did you have the documents in front of you?

Mr. Bunn: The documents?

Q. (By Mr. Diether): This document in front of you?

A. At this particular second it was in Mr. Schroeder's hands.

Q. In Mr. Schroeder's hands? A. Yes.

Q. And that took place while you were at the bank with Mr. Sweeney on July 31st? A. Yes.

Q. Now, look in your deposition at page 236, line 22, beginning there and going over to line 5, page 237.

The Court: Exhibit D in your complaint there refers to the endorsement on the freight bill?

Mr. Diether: Right, your Honor.

(Testimony of J. B. Londono.)

The Witness (Examining deposition): Yes?

Q. (By Mr. Diether): Did you read that?

A. Line 22?

Q. Line 22, over to line 5, page 237.

A. (Examining deposition): Yes?

Q. Did you testify at the time your deposition was taken as follows:

“Q. Did you talk to any official at the bank about securing that endorsement on Exhibit D to your complaint at any time before you went down to Dulien’s office and Mr. Stanley signed the endorsement on the back of that exhibit?

“A. I don’t remember. I don’t think so.

“Q. Did you ever talk to any official of the bank at any time about securing that endorsement on the back of Exhibit D to your complaint?

“A. I have already answered that question.”

The Witness: Yes.

The Court: Go ahead.

Q. (By Mr. Diether): “Mr. Bunn: Answer it again, if Mr. Diether didn’t get it.

“The Witness: I don’t remember, and I don’t think that I inquired or discussed this matter with anyone at the bank.” [732]

Did you so testify at that time? A. Yes.

Q. You so testified? A. Yes.

Q. And which is the truth, that you didn’t talk to any official of the bank or that you did?

A. Not myself. The only thing, it was that Mr.

(Testimony of J. B. Londono.)

Schroeder asked me to have the endorsement. We had no discussion, we don't talk about, I don't say nothing about it. I don't require the endorsement. I don't require the endorsement in the bank. Mr. Schroeder with his words required the endorsement. It is very clear.

The Court: Counsel, I would like to make an observation in connection with the testimony of the witness. I do not know whether you are familiar with it, but in San Diego there are thousands of Spanish-speaking people put on trial, and I have discovered many, many times that they answer truthfully, "Did you have a conversation with somebody," and they will say, "No," "Did you have a discussion with somebody" and they will say, "No," and a few minutes later they will say, "Did you ask Mr. So-and-So on such-and-such a day so-and-so," and they will say, "Yes," but their idea of a conversation and a discussion is, as one of them said, that is like talking to your girl on a park bench, you are not talking about business. So I just wanted to make that observation. [733] It is the result of my experience. I take it into consideration whenever I hear any Latin-speaking witness. As he said, he did not have a discussion with Mr. Schroeder, but Mr. Schroeder asked him to do something.

Also I might say that there was a case in that respect where Mr. Justice Frankfurter, in a trial in the East, when asked if he had a conversation with somebody said, "No, the other man had a conversation with me."



(Testimony of J. B. Londono.)

Q. (By Mr. Diether): On July 31, did you receive the original of that letter from the bank, which is marked Plaintiff's Exhibit 8? It purports to be a letter from the bank to Mr. Londono, [734] dated July 29, 1946?

A. (Through interpreter): Yes, I received it, and I already testified——

Q. You have already testified about both of them, haven't you?

A. About I received this letter.

The Court: Both of what?

Mr. Diether: Both Exhibit 8 for identification and Exhibit 8-A for identification, 8-A being merely the carbon copy on which you have acknowledged receipt.

The Witness (Through interpreter): I have testified that I received the original of this letter that I signed.

Q. (By Mr. Diether): And that this signature on Exhibit 8-A for identification is your signature?

A. Yes, it is.

Mr. Bunn: Before we proceed, may I ask the reporter to read the first question in that last series that Mr. Diether asked when he first directed his attention to that letter?

(The question referred to was read by the reporter as follows:

("Q. On July 31st did you receive the original of that letter from the bank, which is marked Plaintiff's Exhibit 8?")

(Testimony of J. B. Londono.)

Mr. Bunn: That is all. Thank you. [735]

Mr. Diether: May Plaintiff's Exhibit 8 and 8-A be marked? We offer it as Defendant Bank's Exhibits next in order.

The Court: 8 and 8-A will be—which is the carbon and which is the photostat?

The Clerk: No. 8 is the photostat, 8-A is the carbon.

The Court: 8-A will be C-F and 8 will be C-F1.

Mr. Laven: Your Honor, may I inquire, was C-1 withdrawn altogether?

The Court: There is no C-1.

The Clerk: C-E1.

The Court: C-E1 was withdrawn.

You did not offer Plaintiff's Exhibit 10 for identification, although it is the bank's carbon of C-D, nor 16 for identification, although it is the bank's carbon of C-E.

Mr. Diether: We will offer both of those at this time.

The Court: Plaintiff's Exhibit 10 for identification will be C-D1 in evidence and Plaintiff's Exhibit 16 for identification will be C-E1 in evidence.

Mr. Bunn: If your Honor please, I wonder, in view of the witness' testimony as to the uncertainty of the identity of Plaintiff's Exhibit 10, if it is not proper——

The Court: He was uncertain concerning the identification of both C-D and C-E.

Mr. Bunn: As to the uncertainty——[736]

The Court: Of all four documents.

(Testimony of J. B. Londono.)

Mr. Bunn: All right. In view of that uncertainty of the identity of those documents, I don't see a sufficient foundation has been laid for the introduction of those documents yet in evidence, until somebody has identified those particular documents. He hasn't. He has given uncertainty, he has given testimony of an uncertainty in his own mind about the identity of it. I object to them at this time on the ground that there is no foundation laid for them. I think they can lay a foundation, but I don't think they can lay it by this man.

The Court: I think perhaps you are correct. Then the series C-D, C-D1, C-E and C-E1 will remain marked for identification only. C-F and C-F1, however, are in evidence. Those were the letters addressed to Mr. Londono and received by him. What date is there on those, Mr. Clerk?

The Clerk: They are 8 and 8-A.

Mr. Laven: July 31st.

(The documents referred to were marked Defendants' Exhibits Nos. C-F and C-F1 and received in evidence.) [737]

Mr. Diether: I think that I can clear that up in the morning when I have a chance to review my notes a little further.

Mr. Hubert Morrow: That is July 29th?

The Court: Yes, July 29th.

Q. (By Mr. Diether): Have you told us now all that you did in the bank on July the 31st?

A. Please?



(Testimony of J. B. Londono.)

(The question was read.)

A. (Through interpreter): What I have recalled, in accordance with the questions asked.

Q. After Mr. Schroeder asked you to have the freight bill endorsed, and I am merely quoting your language, who took the freight bill then?

A. Mr. Sweeney or I.

Q. You don't know which one?

A. I can't say which one.

Q. Did you look at it at any time from that time until you had been down to Dulien's office?

A. No, I can't say that.

Q. You don't know if you did or not.

A. No.

The Court: Are you getting tired?

The Witness: Oh, I am all right, your Honor.

The Court: I hoped you would say "Yes." [738]

Mr. Diether: If he isn't, I am, I can tell you that.

The Witness: May I say now, Mr. Diether, that at that time, after we left the bank with Mr. Sweeney, we went on Dulien's place in Mr. Rendon's car, driven by him.

Q. (By Mr. Diether): Whose office did you go into when you went to Dulien's office—Dulien's place of business?

The Court: Counsel, that was covered on direct. Of course, you have a right to have him repeat the story, but Mr. Dasteel went into that, he went into all that story, and if you have some point in your

(Testimony of J. B. Londono.)

cross-examination, why not get to it and skip all this pure repetition.

Q. (By Mr. Diether): Was there any discussion about this document before Mr. Stanley put the endorsement on the back? A. No.

Q. And after Mr. Stanley put the endorsement on the back, you took the document?

A. Yes. I had the document in my possession. I don't know if in my pocket, or in my file in Mattoon office, because I had desk in Mattoon——

Q, But you took the document?

The Court: Wait a minute. He hasn't finished. You had a desk——

The Witness: I had a desk in Mattoon I used to write letters and make invoices, and I had a folder in Mattoon office. [739]

Q. (By Mr. Diether): And you had possession of it from the time Mr. Stanley put the endorsement on until the time you gave it to Mr. Bunn, I think on the 24th of August?

A. (Through interpreter): Probably, yes.

Q. Did you have any discussion with anybody about it prior to the time you talked to Mr. Koppel on August the 23rd?

A. No, I had no discussion. [740]

\* \* \*

Cross-Examination

April 27, 1950; 10:00 A.M.

(Continued)

\* \* \*

(Testimony of J. B. Londono.)

By Mr. Diether:

Q. Mr. Londono, did you bring in the amended invoice to Mr. Echavarria? A. Yes.

Mr. Bunn: You had it in my office this morning. [745]

The Witness: Yes.

Mr. Bunn: It is a blue paper, isn't it?

The Witness: Yes—here it is.

(The document referred to was passed to counsel.)

Mr. Diether: The witness has handed me a document which is written in Spanish. May I deliver it to the clerk to be marked for identification and then we will hand it to the interpreter to read in English?

The Court: It will be your next number in order. That is C-G.

(The document referred to was marked Defendants' Exhibit C-G for identification.)

Mr. Bunn: May I suggest, Mr. Diether, that the language of all of that but the note at the bottom be compared by the interpreter silently with the one that was testified from before and it will save reading into the record a translation that has already been fully read into the record.

Mr. Diether: No. I would like to have the entire document read into the record.



(Testimony of J. B. Londono.)

The Interpreter: The letterhead is: J. B. Londono, Medellin, Colombia. Telegrams and cables: "Jotabe." P. O. Box 979.

Los Angeles, California, July 27—it is written July 24, crossed out, and then written 27 on top—1946.

It is to Mr. Alberto Echavarria, Medellin (Colombia). [746]

On account with J. B. Londono, Los Angeles, Cal., debit.

One thousand (1000) tons barbed wire galvanized, new, double twist, at U. S. \$160 per ton cif Colombian port.

The extension is U. S. \$160,000. Then written in letters, one hundred sixty thousand dollars.

Double space. Credit No. 3578 of Citizens National Bank, Los Angeles.

Next line: Ditto marks, No. 4036 of Banco Comercial Antioqueno, Medellin (Col.) abbreviation for Colombia.

Then after double space, J. B. Londono.

Then note: This invoice should be considered provisional and has been formulated only to collect the credit. With each shipment a detailed invoice will be sent. Has been used under date of July 27.

The Court: Very well.

Mr. Diether: Is that all of it?

The Interpreter: Then there is a word "copy" on the end.

The Court: This is for identification?

Mr. Diether: Yes, for identification. [747]

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): Did you make any amended invoice to Mr. Echavarria other than the one that the interpreter has just read (interpreted)?

A. (Through interpreter): With each shipment sent to Colombia an individual invoice was made.

Q. Do you have the copies of those invoices?

A. No.

Q. You didn't retain a copy?

A. No. The invoices I made here, I haven't copy.

Mr. Diether: I didn't hear the answer.

(The answer was read by the reporter.)

Q. (By Mr. Diether): You have no copies of any other invoices you sent to Mr. Echavarria?

A. Made here?

Q. Yes.           A. No.

Q. Or in Colombia? Did you make any in Colombia?           A. Yes, we made in Colombia.

Q. Have you got copies of those?

A. I suppose I have.

Q. Do you have them with you?

A. Not with me.

Q. Are they in the United States?

A. I have a lot of papers in my suitcase.

Q. Will you see if you can find any? [748]

A. Yes.

Q. And bring those to court, please?

A. Yes, Mr. Diether.

Q. Yesterday you stated that you did not know whether you had seen the letter of July 29th from

(Testimony of J. B. Londono.)

the bank to Mattoon & Company. That is Defendant Bank's Exhibit C-D. Since last night have you had any time to think about that matter?

I am handing the witness Defendants' Exhibits C-D and C-D1.

A. (Through interpreter): I don't remember anything that could change the testimony of yesterday.

\* \* \*

Do I understand your testimony to be that you did not see the original of that letter, which is Exhibit C-D, or a copy, which is Defendants' Exhibit C-D1, at any time prior to your coming into the court room yesterday?

Mr. Hubert Morrow: It seems to me we covered that upside down yesterday. I object on the ground it is repetition.

The Court: Yes. The objection is sustained.

Mr. Diether: If your Honor please, if your Honor will recall, I could not find some references I had yesterday, and I would like to——

The Court: Well, you found the other document and [749] submitted it to him. We spent 30 minutes on that one question yesterday, and the net result was that the witness could not remember.

\* \* \*

The Court: That is not his testimony and assumes a fact not in evidence. It is objectionable upon that ground.

\* \* \*



(Testimony of J. B. Londono.)

Mr. Diether: I haven't had a chance to read the transcript of yesterday, so I am not in a position to say exactly what the witness' testimony was, only from my memory. But if your Honor will not permit me to examine him any further, [750] I wish to call this witness' attention to a portion of his testimony which was taken at the time of the deposition, page 126, beginning on line 9, and going to page 127, line 22.

(Witness examines deposition.)

The Court: Now, is that Exhibit F that you are talking about, that same letter?

Mr. Diether: That is the same letter. That Defendants' Exhibit C-D is Defendants' Exhibit F.

(Handing document to witness.)

Q. (By Mr. Diether): Have you read it?

A. Yes.

Q. Did you testify at the time of the taking of your deposition, as follows, and this is beginning at page 126, line 9:

“Q. I show you a letter here marked Defendants' Exhibit F, on the stationery of the Citizens National Bank, under date of July 29th, addressed to Mattoon & Company, and signed by Glenn Powers, then at the bottom there is an acknowledgment of the receipt of it by Mattoon & Company, signed by Mr. Sweeney. I will ask you if you ever saw a copy

(Testimony of J. B. Londono.)

of that letter or knew of its contents or knew that it had been written or received.

“Mr. Bunn: Before he answers, you mean a copy [751] of the letter or the original?”

“Mr. Dasteel: Either one. I am asking him if he knows anything about it.

“The Witness: I saw one original or one copy, or both.

“Mr. Dasteel: Where did you see it, Mr. Londono?

“A. At the Mattoon offices.

“Q. On what date? In order to help refresh your memory, was it on a Saturday?

“A. Saturday.”

The Court: No. “A. Saturday—question mark.”

Mr. Diether: Question mark.

“Q. July 29th, Saturday.

“Mr. Bunn: Mr. Dasteel, pardon me, but Saturday was not July 29th.

“Mr. Dasteel: You are right.

“Q. Was it on Monday, July 29th?

“A. No, because I was not at the Mattoon office on July 29th.

“Q. What day were you there?

“A. The first week of August.

“Q. The first week of August?

“A. The first week of August.

“Q. Was it the early part of the week [752] or the latter part of the week?

“A. I don't recall.

(Testimony of J. B. Londono.)

“Mr. Bunn: That question is not as helpful as you think it is, because the 1st day of August was on Thursday. Please clarify your question.

“Mr. Dasteel: When you say the first week of August do you mean the first few days of August?

“A. I will say the end of July or beginning of August.”

Did you so testify?           A. Yes.

Q. And does that state the truth in regard to when you first saw that exhibit?

A. (Through interpreter): There isn't anything in my mind to deny this testimony. It was that way when I gave it, when I testified. And that is the essence of what he said. [753]

\* \* \*

Q. (By Mr. Diether): After you left Dulien's office on July 31, I believe you stated that you went to the dock, Pier A, in Long Beach.

A. It is my recollection that I stopped on that place on my way to Wilmington.

Q. What quantity of wire was on the dock at that time?           A. A big quantity. [754]

Q. What is that?           A. A big quantity.

Q. Did you examine it?

A. Yes. I looked at the wire and I wanted to see what kind of wire it was moved from Long Beach to Moore-McCormack Line in order to know what wire was going to be shipped to Colombia.



(Testimony of J. B. Londono.)

Q. Was there any chalk marks on the dock at that time?

A. I don't recall exactly what day, about the 31st of July, I saw chalk marks on the dock. But I remember one of those days, about the 31st, I saw the marks "Gonzalez & Blanco" on the right and "Dulien Steel Products" on the left. But I don't know the day exactly.

Q. Were they taking any wire from the dock at that time for you?

Mr. Bunn: I object to that as calling for a conclusion, and it is a question which this witness could not positively answer.

Mr. Diether: If he knows.

The Court: Were they taking any wire from the dock?

Mr. Diether: For Mr. Londono.

The Court: For whom?

Mr. Diether: Mr. Londono.

The Court: Who is "they"? [755]

Q. (By Mr. Diether): Were any of your agents taking wire from the dock for you?

A. On that particular day?

Q. Yes.

Mr. Bunn: Same objection. When he puts the "for you" in there it calls for a conclusion from this witness.

The Court: If he knows he can answer. Do you know?

The Witness: I saw people moving wire from

(Testimony of J. B. Londono.)

the piles but I can't say in particular if it was for me or for Gonzalez.

Q. (By Mr. Diether): Mr. Sweeney was with you, wasn't he?

A. Yes, and maybe he can say.

Q. Did he tell you whether they were taking any wire for you?

Mr. Bunn: I object to that as incompetent, irrelevant and immaterial, what Mr. Sweeney told him then.

The Court: Overruled.

The Witness: I think that at that time the lot assigned to Cartagena, 112 tons or 120 tons, was already moved.

The Court: It was already moved.

The Witness: Moved. I don't remember if at that particular time, at the moment, some wire it was moved from—[756]

The Court: He wants to know whether or not Sweeney told you they were taking any wire for you.

The Witness: Not that I remember.

Q. (By Mr. Diether): Then you went over to the Moore-McCormack dock? A. Yes.

Q. And you saw some wire there? A. Yes.

Q. How do you know it was yours?

Mr. Bunn: He hasn't so testified—yes, he has. Excuse me.

The Witness: Because Mr. Sweeney, I asked Mr. Sweeney to take me at the place when the wire it was moved for my account, and obviously I saw the

(Testimony of J. B. Londono.)

wire in the dock, Moore-McCormack dock, for account of J. B. Londono to ship to Cartagena and I conclude it was my wire.

Q. (Mr. Diether): That was on the evening of July 31st?      A. I suppose so.

Q. You are sure of it, aren't you?

A. Probably, yes.

Q. Was that wire subsequently moved from the Moore-McCormack dock back to Pier A?

A. At the first time when I saw the wire——

The Court: Do you know whether it was [757] moved——

The Witness: I beg your pardon.

The Court: Do you know whether it was moved back to Pier A or not?

The Witness: I don't know.

The Court: If you don't know, you can say so.

The Witness: Your Honor, I will add that I ordered Mr. Sweeney, don't ship that wire.

Q. (By Mr. Diether): You directed him then to do what?

A. The first time I told Mr. Sweeney, don't ship that wire to Colombia, but on the way back I asked him, or he told me about the possibility of segregating the wire in Moore-McCormack dock, and I said then, "All right, separate the less bad wire and ship the best to Colombia."

Q. Was any separation made of that wire on the Moore-McCormack dock?      A. Yes, it was.

Q. You separated out the rusty from the good wire, is that your contention?



(Testimony of J. B. Londono.)

A. Yes. I ordered to ship the less bad wire and then they shipped 112 tons net and left about 30 tons in the dock.

Q. Did you see them separating the wire at the Moore-McCormack dock at any time after July 31?

A. No, not that I remember.

Q. You stated that you had a bill for that segregation [758] on the Moore-McCormack dock for that 112 tons?

A. Yes.

Q. Will you bring that in to court, please?

The Court: I think it is already here.

Mr. Bunn: I think it is already here, and that Mr. Sweeney will be able to testify about it.

Mr. Diether: I haven't been able to locate it. I would like to see it.

Mr. Bunn: I haven't looked through Mattoon's papers that are here.

The Court: There was one such bill listed in your list of exhibits.

Mr. Bunn: Yes, sir.

Mr. Diether: That is for the West Wind. That is the boat which sailed some time later.

The Court: Very well.

Q. (By Mr. Diether): Was all the wire which was shipped on the Mormacreed taken from the Long Beach dock on July 31st?

The Court: If you know.

The Witness (Through interpreter): To my knowledge, yes.

Q. (By Mr. Diether): Do you know when the Mormacreed sailed from Los Angeles?

(Testimony of J. B. Londono.)

A. The bill of lading showed——[759]

Q. Just answer. Do you know what day it sailed?

A. (Through interpreter): I didn't see the boat leave but a document said it was the 20th, August 20th.

Mr. Diether: May I see Plaintiff's Exhibit 15?

(The document referred to was passed to counsel.)

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 15 and ask you if you saw the original of that letter or the copy on or about the date it was dated.

The Court: That is the letter of M & M Transfer?

Mr. Diether: To M & M Transfer; yes.

The Witness (Examining document): No.

The Court: The question is whether or not he saw the letter on or about the date it bears?

Mr. Diether: That is right.

The Court: Or whether or not he has ever seen the letter?

Q. (By Mr. Diether): Have you ever seen the letter? A. No, I don't remember.

Q. Did Mr. Sweeney ever tell you about that letter? A. No.

Q. Did you give Mr. Sweeney the instructions which are contained in that letter?

A. I told Mr. Sweeney, don't ship the wire, that wire, [760] to Colombia.

(Testimony of J. B. Londono.)

Q. That is all you told him?

A. But later on, on my next conversation or the same conversation, I say, "Select the wire, separate the wire, and ship the less bad wire to Colombia."

Mr. Bunn: I think that is about six times that he has been required to testify to that same incident.

Q. (By Mr. Diether): Isn't it true, Mr. Londono, that you didn't give any instructions to Mr. Sweeney to separate the wire until after the 112 $\frac{3}{4}$  tons were shipped on the Mormacreed?

The Witness: Will you repeat that?

(The question referred to was read by the reporter as follows:

("Q. Isn't it true, Mr. Londono, that you didn't give any instructions to Mr. Sweeney to separate the wire until after the 112 $\frac{3}{4}$  tons were shipped on the Mormacreed?")

The Court: You mean until after August 20?

Mr. Diether: That is not the date I believe that the boat sailed.

The Court: That is the date that he said he heard the boat left.

The Interpreter: Shall I proceed?

The Court: I do not know what counsel means, "until after [761] it was shipped." I do not know what he means by "shipped."

Mr. Diether: The day the boat left, whatever day it was.

The Interpreter: Shall I interpret?



(Testimony of J. B. Londono.)

The Court: Yes.

The Witness: I don't understand the question.

The Court: I think the question is still indefinite.

The witness says he doesn't know the date the boat left. He heard that it left on the 20th. In your question you said you wanted to know whatever date it left.

Mr. Diether: Let me reframe it.

Q. After the first 112 $\frac{3}{4}$  tons of wire were taken from the dock at Pier A—— A. Yes.

Q. ——didn't you then at that time first give Mr. Sweeney instructions to separate the wire?

The Court: That is what he testified to a dozen times already.

Mr. Bunn: He has already testified to that.

The Court: That it was after that it was moved to the Moore-McCormack dock.

Q. (By Mr. Diether): Did you go back to Mr. Sweeney's office in the evening of July 31st when you were at the dock, the Moore-McCormack [762] dock?

A. I don't remember if I went to his office or I left him at the door of the building. [763]

Q. You went to his office the next day, didn't you? A. The next day.

Q. Which was August the 1st? A. Yes.

Q. And you wrote the letter then to Mr. Dulien?

A. Yes.

Q. Mr. Sweeney helped you dictate that letter?

A. Probably, yes.

Mr. Bunn: Well, do you know?

(Testimony of J. B. Londono.)

The Witness: I don't remember if Mr. Sweeney. I remember his secretary.

Q. (By Mr. Diether): Wasn't Mr. Sweeney right there with you?

A. I think he was in the office, and I show him the letter after——(Through interpreter). It was written——(In English) and he approved.

Q. At that time did you have any documents before you, when you wrote that letter? A. No.

Q. Didn't you have Plaintiff's Exhibit 7 in front of you at that time, which is the freight bill?

A. No.

Q. I call your attention to your testimony at the time your deposition was taken, at page 204, line 5, to page 204, line 15. [764]

\* \* \*

The Court: He testified, and I have forgotten the precise date, that he had it, and the two of them went out, and they sat down at Dulien's, and he said they looked at it and that he does read English. So that if all you want to establish is that he saw the freight bill before he discovered it was not actually the bill of lading, the plaintiff himself proved that.

Mr. Diether: Then I think, your Honor, if your Honor is satisfied, all right. Also, I want to prove——

The Court: I am not satisfied about anything, but I am certain if that is what you want to show, it is already shown in the record because the witness so testified.

(Testimony of J. B. Londono.)

Mr. Diether: Also, I want to show that this witness testified differently at the time his deposition was taken.

The Court: Very well.

Mr. Diether: I think that goes to show the character of this man's testimony.

The Court: Very well. What page was it, again?

Mr. Diether: Page 204, line 5. [766]

The Court: This is solely an impeaching question?

Mr. Diether: That is correct.

The Court: All right.

Mr. Diether: To page 204, line 15.

Mr. Hubert Morrow: Line 5, you say?

Mr. Diether: Line 5, yes.

The Court: From line 5 to where?

Mr. Diether: To line 15.

The Court: To line 15. Well, let him finish it.  
down to line 21.

Mr. Bunn: You have read it, sir?

The Witness: Yes.

Q. (By Mr. Diether): All right. Did you testify at the time your deposition was taken as follows:

“Q. In this letter you mentioned ‘bill of lading LA 29.’ Where did you get that information?

“A. Let me see it, please. Because I had on hand a document that I presumed was the bill lading, that I now know was a bill of freight, and on which it is clearly marked ‘LA 29.’



(Testimony of J. B. Londono.)

“Q. Mr. Sweeney was present when you dictated that letter, was he not? A. Yes.

“Q. Did you receive this document, Plaintiff’s Exhibit 1, from Mr. Sweeney? [767]

“A. Yes.”

The Court: That is the freight bill?

Mr. Diether: Yes.

Q. (By Mr. Diether) (Continuing):

“Q. Didn’t he tell you that that was not a bill of lading? A. No.

“Q. Did he tell you that it was only the freight bill?

“A. He and I presumed that it was a bill of lading.”

Did you so testify?

A. Yes. And may I add that when I said I had, in the Spanish means——(Through interpreter) when I formulated that letter I referred to I had the document, which means that I have had it at some time, that is, in the past.

Mr. Bunn: He said preterit, p-r-e-t-e-r-i-t, didn’t he?

The Interpreter: Yes.

Mr. Bunn: He said that in Spanish.

The Court: What does “preterit” mean?

The Interpreter: The past time.

Mr. Bunn: A continuing past.

The Witness: And when I say I had, it means I had at one time. That’s correct, from the [768] Spanish.

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): This letter that you received from Dulien on August the 7th, which is Plaintiff's Exhibit 25, for identification, that just merely confirms the agreement you had with Mr. Grinstein on August the 5th, doesn't it?

Mr. Bunn: That speaks for itself; that document does. I object to the question.

The Court: Objection sustained.

\* \* \*

Q. (By Mr. Diether): This letter was merely the confirmation of the arrangement that you had with Mr. Dulien on August 5th?

Mr. Bunn: The same objection, that it calls for a conclusion, and the document speaks for itself fully.

The Court: He wants to know and he is asking whether or not his understanding of that letter is a confirmation [769] of the conversation which occurred on August 5th.

Mr. Diether: That is right.

The Witness (Through interpreter): The conversation that was begun on August 5th and that probably continued up to the 7th, when I got the letter.

Q. (By Mr. Diether): When you went to the dock on August the 5th with Mr. Grinstein, was Mr. Sweeney with you?

A. I can't recall, Mr. Diether.

Q. Were they separating any wire on the dock at Pier A, when you were there on August 5th?

(Testimony of J. B. Londono.)

A. Yes. I saw people separating wire, taking wire from the boat to cars for Gonzalez & Blanco.

Q. I don't believe you understand. Were they separating the rusty wire from the non-rusty?

Mr. Bunn: I object to the question as uncertain. If he means taking out one kind of wire as distinguished from another, or taking one kind from over here and putting it over here, that is one thing.

Mr. Diether: The witness testified he gave instructions to Mr. Sweeney to start separating the wire.

Mr. Bunn: At Moore-McCormack.

Q. (By Mr. Diether): Was any separation being done for you on Pier A, that you know of?

A. At that particular time, I don't remember.

Q. Was any separation being done for you on August the [770] 7th?

Mr. Bunn: If you know whether it was being done for you.

The Witness: No, I don't know.

Q. (By Mr. Diether): You don't know. After you received that letter from Mr. Dulien on August the 7th, do you know whether the rusty wire which you directed Mr. Sweeney to have separated out—was that put in any one particular place or location on the dock?

The Court: Let me hear that.

(The question was read by the reporter.)

The Court: All he wants to know is whether you know the wire was separated after August 7th.



(Testimony of J. B. Londono.)

The Witness: Yes. [771]

Q. (By Mr. Diether): Was it put in any particular place, that is, the rusty wire?

A. No. (Through interpreter) The wire that was separated was placed on the dock in places where they were to be shipped to South America.

Q. Was that in Pier A?

A. (Through interpreter): The wire that was separated there, if it was separated, it was moved immediately to another pier for shipment.

Q. You mean the rusty wire, you mean the worst wire?

Mr. Bunn: He hasn't so stated.

The Witness: I didn't see it after it was in the other pier.

Q. (By Mr. Diether): In this letter which you got from Mr. Dulien on the 7th he stated, you separate out the rusty wire and we will renegotiate the price about that later, and I want to know now, did you separate out the rusty wire and did you put it in any particular place where it could be identified?

A. No, because after I received the letter from Dulien, Matson refused me the privilege of separating the wire.

Mr. John Morrow: If the court please, I move to strike the reference to Matson as not responsive. "Matson refused" is a conclusion of the [772] witness.

The Court: The motion is denied.

Mr. Diether: I wish to show the witness the

(Testimony of J. B. Londono.)

letter which is referred to in our list of exhibits which is No. 25, and our document No. 43.

The Court: As item number what?

Mr. Diether: 25.

The Court: It will be marked for identification as C-H.

(The document referred to was marked Defendants' Exhibit C-H for identification.)

Q. (By Mr. Diether): I show the witness what purports to be an original letter from Mattoon & Company to the bank dated August 20. Did you see that letter at any time?

A. I believe yes.

Q. When did you see it?

A. I think I take it personally, the letter with the documents, and Mr. Sweeney to the bank. My recollection is that it was the same day I paid the bank \$3,050.

Q. In other words, you took that to the bank on August 20, 1946?

Mr. Bunn: He said he thought so.

The Witness: Probably yes, Mr. Diether.

Q. (By Mr. Diether): And at that time you received from the bank the bill of lading for the shipment of 112-3/4 tons of wire which [773] you were shipping on the Momacreed?

A. Yes, and I gave the bank a check for \$3,050.

Mr. Diether: May that be offered as defendant bank's next exhibit?

The Court: In evidence. C-H.

(Testimony of J. B. Londono.)

(The document previously marked for identification as Defendants' Exhibit C-H was received in evidence.)

Q. (By Mr. Diether): Did you know the next quantity of wire you shipped to South America?

A. Yes.

Q. What boat did it go on?

A. It went by Moore-McCormack boat to Cartagena, about 430 tons.

Q. Do you remember what the name of the boat was? A. (Pause.)

Q. Was it the West Wind?

A. Maybe. It was a Moore-McCormack boat.

Q. Do you know when the wire was picked up from Pier A, for you, that was shipped on the West Wind? A. I think it was during August.

Q. Do you know the dates?

A. No, Mr. Diether.

Mr. Diether: I now wish to show the witness the exhibit which is Item 30 and 31 on the defendant bank's list. [774]

The Court: Do you suppose there would be any possibility about entering into a stipulation concerning the sending of these documents?

Mr. Diether: I would be glad to stipulate.

Mr. Bunn: I am perfectly happy to stipulate about these shipments to South America.

Mr. Diether: And that these documents have been duly signed? [775]



(Testimony of J. B. Londono.)

Mr. Diether: At this time, your Honor, I think the parties wish to stipulate that the document which has been marked C-J, which is a carbon copy of a letter from Mattoon & Company to the Citizens Bank, dated August 30, 1946——

The Court: Your item No. 30?

Mr. Diether: No. 30? No, No. 31. ——that the original of that letter was received by the bank on or about the date it is dated, and that on or about August the 30th, 1946, Mr. Londono received from the bank the original documents therein referred to and that he acknowledged receipt of same on the letter which is Exhibit C-J.

Mr. Bunn: I so stipulate.

The Court: All right. If there is no indication of not joining, I take it that everybody else joins in that.

Mr. Hubert Morrow: That statement is correct, your Honor. That is No.——

The Court: It is C-J, and it is item No. 31 on the bank's list.

Mr. Hubert Morrow: Yes, sir.

(The document referred to was marked Defendants' Exhibit C-J, and was received in evidence.)

Mr. Hubert Morrow: What about C-I?

Mr. Diether: C-1 will be offered next. The parties desire to stipulate that the exhibit which is marked C-I, which is a carbon copy of a letter

(Testimony of J. B. Londono.)

form Mattoon [776] & Company to the defendant bank, dated August 30th, 1946, that the original of that letter was received by the bank on or about the date it is dated, and that on or about August 30th, 1946, the bank delivered to Mr. Londono the originals of the documents therein referred to, and he acknowledged receipt of same on said date.

Mr. Bunn: I so stipulate.

The Court: Very well. The stipulation is approved.

(The document referred to was marked Defendants' Exhibit C-1, and was received in evidence.)

Mr. Diether: The parties desire to stipulate that the exhibit which is marked C-K, which is the original of the letter from Mattoon & Company to the Citizens Bank, dated October 11, 1946, was received by the bank on or about the date it is dated, and that on or about said October 11, 1946, the bank delivered to Mr. Londono the documents therein referred to, and that Mr. Londono acknowledged receipt of same on said October 11, 1946.

The Clerk: That is your No. 34?

Mr. Diether: 57.

Mr. John Morrow: Will you give us your item number on each one?

Mr. Hubert Morrow: This is No. 37?

Mr. Diether: 57.

The Court: Your item 57? [777]

Mr. Diether: Yes.

(Testimony of J. B. Londono.)

The Court: I don't have any item 57. There isn't any 57 on my list.

Mr. Diether: Oh, No. 34.

The Court: The bank's item No. 34?

Mr. Diether: Right.

The Court: All right. As to C-K, the stipulation is approved, and it is in evidence.

(The document referred to was marked Defendants' Exhibit C-K, and was received in evidence.)

Mr. Diether: The parties desire to stipulate that the defendant bank on or about October 28, 1946, wrote a letter to Mattoon & Company, the original of which is Exhibit C-L——

The Court: Item No. 36 on your list?

The Clerk: 62.

Mr. Diether: 62.

The Court: Item 36, bank's No. 62?

Mr. Diether: Yes.

Mr. Hubert Morrow: If you will give us that number each time, it will save a lot of time.

Mr. Diether: Item No. 36, bank's No. 62. That the original of that letter——

The Court: Now, is that the one you just got through talking about?

Mr. Diether: Yes, that the original of that letter—— [778]

The Court: You have got a new one?

Mr. Diether: Oh, no.



(Testimony of J. B. Londono.)

The Court: All right.

Mr. Diether: That the original of that letter was received by Mattoon & Company on or about the date it was dated.

The Court: All right: It is in evidence as C-L.

(The document referred to was marked Defendants' Exhibit C-L, and was received in evidence.)

Q. (By Mr. Diether): Mr. Londono, as I understand from your testimony, Mattoon & Company, or its agents,—Strike that.

As I understand from your testimony, Matson Navigation Company, or its agents, refused to allow you to select wire on the dock at Pier A?

A. Yes.

Q. But they did not at any time refuse to deliver wire to you?

A. No, that I remember——(through interpreter) that I know.

Q. I show you item 26 on the bank's list which purports to be a carbon copy of instructions to Matson Navigation Company, dated August 22, 1946, together with a copy of instructions to Koppel & Company.

While counsel are examining those documents, do you [779] remember giving any particular instructions to Mr. Mattoon——

Mr. Bunn: Mr. Sweeney, you mean?

Q. (By Mr. Diether): ——to Mr. Sweeney in regard to giving instructions to Koppel & Company

(Testimony of J. B. Londono.)

relative to separating the rusty wire in connection with the shipment that you made on the vessel which was named Lookout?

Mr. Bunn: I object to the question as confusing, that is, that it is not clear, it is indefinite.

The Court: It is a little.

Mr. Diether: I will withdraw it and reframe it.

Q. (By Mr. Diether): You remember you shipped 500 tons of wire on the steamship Lookout?

A. Yes.

Q. Did you give Mr. Sweeney any special instructions in connection with separating out the rusty wire that was shipped on that vessel?

A. On all shipments I gave Mr. Sweeney instructions to separate.

Q. Did you see any copy of any written instructions that he ever gave to Koppel & Brothers in connection with that shipment? A. No. [780]

The Court: That will be C-M. What are they, three sheets?

Mr. Diether: No, two sheets.

The Court: C-M1 and C-M2.

(The documents referred to were marked Defendants' Exhibits C-M1 and C-M2 for identification.)

Mr. Bunn: I haven't seen these before.

Mr. Hubert Morrow: Are they marked for identification?

The Court: Yes, they are marked for identification.

(Testimony of J. B. Londono.)

(Exhibiting documents to counsel.)

Q. (By Mr. Diether): I show you defendant bank's Exhibit C-M1 and C-M2 for identification. Did you ever see the original or a copy of either of those two documents before? A. No.

Mr. Diether: Those documents, your Honor, are from the file of Mattoon & Company which they have delivered here in court.

Q. You went to Wilmington with Mr. Sweeney to the office of Matson Navigation Company to inquire about the shipping documents on this wire, did you not?

Mr. Bunn: What date?

Mr. Diether: I don't know. He didn't specify the date.

The Witness: Yes. [781]

Q. (By Mr. Diether): Do you remember now what date it was?

A. I don't know the date. It was after August 24.

Q. Was it about a week?

A. After August 24.

Q. How long after, a few days?

A. A few days.

Q. Did you see a document there at Matson's office in connection with this shipment?

A. Yes.

The Court: That is the shipment on the Lookout.

Mr. Diether: No, the shipment——

The Witness: White Squall.



(Testimony of J. B. Londono.)

Mr. Diether: —for the White Squall. That is what he testified about.

Q. Did you have the document in your hands or—— A. It was in front of me.

Q. Did you have any other documents with you at that time?

The Court: This is the occasion when he went to Matson Company in Wilmington?

Mr. Diether: That is right.

The Witness: Yes. I had and I have had—how do you say that? (Through interpreter) I had at that moment the bill of freight. [782]

Q. With you? A. With me.

Q. Did you compare the bill of freight with the document that you saw?

A. I remember I read it. I compared the type-writing legend written on that bill of freight with the one written on the other document and I found no difference.

Mr. Bunn: Did he say typewritten?

The Interpreter: Yes, typewritten.

The Witness: From my recollection now the other document—— (through interpreter) the other document that I saw must have been a copy of the bill of lading. [783]

\* \* \*

The Court: Very well. The record will show that counsel for Matson has now handed Mr. Diether, counsel, for the bank, the original bill of lading, LA-29.

The Clerk: Do you want it marked C-N?

(Testimony of J. B. Londono.)

The Court: C-N.

(The document referred to was marked Defendants' Exhibit C-N for identification.)

Mr. Diether: It is our Item 12, your Honor, on the list.

The Court: Very well.

Q. (By Mr. Diether): I show you what purports to be the original bill of lading of Matson Navigation Company, No. LA-29. Was that the document that you saw in Matson's office in Wilmington? A. I suppose no. [784]

\* \* \*

The Court: You have handed the clerk some other documents?

Mr. Diether: I have handed the clerk another copy of a bill of lading No. 29 which was exhibited to—I don't know whether it was exhibited to this witness, but it was used at the time of the taking of the depositions. I think it was exhibited to Mr. Moran.

Mr. Laven: This was marked at the time of the taking of the deposition and it was produced from the files of the government which was turned over to it by Matson Navigation Company. It was shown at the time the deposition was taken and so marked.

Mr. Diether: As a true copy of the bill of lading.

The Court: Whatever it is, it will be marked C-O. That is a copy of a bill of lading.

(Testimony of J. B. Londono.)

(The document referred to was marked Defendants' Exhibit C-O for identification.)

\* \* \*

The Court: Are you offering a stipulation that the original of this document, and that it is a true carbon in so far as the typing goes, or what?

Mr. Laven: We will have to compare that, your Honor.

The Court: Here is the original.

(The document referred to was passed to counsel.) [785]

Mr. John Morrow: It certainly doesn't have all of the writing that the original has.

Mr. Laven: This apparently is a typed copy, an original typed copy.

The Court: It is an original. Then is it stipulated that it is not a carbon copy of the original?

Mr. Laven: Yes, and in different amounts too.

Mr. Dasteel: The photostatic copy of that would show the change. I think the court ought to see this.

Mr. Diether: Now may we also have marked at the same time——

Mr. Bunn: Wait a minute.

Mr. Diether: We will have it marked first. There is another copy of a bill of lading, LA-29, which is attached to Matson's answer and it is Exhibit B.

Now can you produce the original of that, Mr. Morrow?

The Court: You mean the one from which that photostat was made?



(Testimony of J. B. Londono.)

Mr. Diether: That is right.

Mr. John Morrow: No, I believe Mr. Laven may have had that at the time he represented Matson. I don't know where it is.

Mr. Diether: This answer is signed by your firm.

Mr. John Morrow: I don't know where the photostat came from. The answer was prepared by Mr. Aldwell in San Francisco. [786]

The Court: Do you want that one attached to Matson's answer marked C-P for identification?

Mr. Diether: Yes.

(The document referred to was marked Defendants' Exhibit C-P for identification.)

The Court: They are all marked for identification. [787]

\* \* \*

The Court: I will reframe the stipulation on C-O: that it is a purported copy of the original bill of lading, which is not a true and accurate copy, but that it was furnished by the United States Attorney who received it from Matson.

Mr. Bunn: I will stipulate that far.

Mr. Diether: So will I.

The Court: All right.

Mr. Laven: Speaking of the form only still.

The Court: Now, as to C-P.

Mr. Diether: As to C-P Matson alleges in its sixth defense the bill of lading actually issued is the form described in said complaint, and said bill of lading is annexed hereto as Exhibit B, and that is

(Testimony of J. B. Londono.)

the one that has been marked C-P. So they allege it is a true copy of the original, as I understand it. In other words, it is a carbon copy.

Well, they do not bear the same form numbers.

\* \* \*

The Court: I don't know what counsel's point in there is. The original bill of lading is here. If any one of these copies were given to anybody in the course of this litigation, and were acted upon as being a true copy of the bill of lading, that is one thing. But these copies that [791] we are talking about here now—I don't know what Moran said in his deposition, but that copy there, how could anybody be prejudiced by it?

\* \* \*

The Court: Unless the evidence shows that somebody received a copy which was not a true copy and acted upon it.

Mr. Hubert Morrow: Yes, sir.

The Court: But the evidence doesn't show that yet.

Mr. Diether: Can we have the same stipulation, then, with regard to C-P that we did with regard to C-O?

\* \* \*

The Court: It purports to be a copy, but that it is not an accurate copy.

Mr. Bunn: The trouble is these documents are not the same.

The Court: I am just saying and formulating

(Testimony of J. B. Londono.)

the stipulation: that it was attached to the answer and was referred to counsel who prepared the answer as being a true copy at the time they attached it to the answer. [792]

Mr. Diether: Very well.

Mr. Bunn: I will so stipulate.

The Court: That is Exhibit B to defendant Matson's answer.

\* \* \*

The Court: Counsel, I think in fairness to him you had better show the witness the different forms.

\* \* \*

The Court: Now, you have before you Exhibit D-A, C-N, C-O and C-P?

Mr. Diether: Right.

The Court: And your question is if he can tell from examining those documents whether or not any of them are copies [793] of the documents which he saw as a bill of lading in Wilmington on August 24th, or the document itself.

Mr. Bunn: Do you understand?

The Witness: Yes.

Mr. Hubert Morrow: May I be sure of the record? You are showing the witness Exhibit D-A?

The Court: Dulien's A.

Mr. Hubert Morrow: Is that for identification?

The Court: That is for identification, yes.

Mr. Hubert Morrow: And C-O for identification?

The Court: C-N, for identification; C-O, for identification; and C-P, for identification.



(Testimony of J. B. Londono.)

Mr. Hubert Morrow: They are all for identification?

The Court: All for identification.

Mr. Hubert Morrow: Thank you, sir.

The Witness (Through Interpreter): I remember having seen in Wilmington a document similar or exactly as that in front of me, which had in its body a typewritten description exactly as the one expressed in the bill of freight.

The Court: All right. Now, let's give him the bill of freight, then. That is Plaintiff's Exhibit No. 7.

(The document was handed to the witness.)

The Witness: In other words, my comparison, it was made——

Mr. Bunn: "Comparison"—is that the word?

The Court: You still have to talk to Mr. Morrow over [794] there (indicating), although these fellows are right at your elbow.

The Witness: My comparison, it was regarded——

Mr. Bunn: Louder.

The Witness: ——the description of the goods, and my principal point was to look for some exception in the body. (Through Interpreter): I was looking for a remark in the document regarding the condition of the merchandise, and I didn't find it.

The Court: An exception, he says.

The Interpreter: An exception.

The Witness: Remarks.

(Testimony of J. B. Londono.)

The Court: Yes.

Q. (By Mr. Diether): Can you identify any one of these as being the documents you saw in Wilmington or a copy of any of the documents you saw in Wilmington?

A. (Through Interpreter): My recollection is that the document I saw in Wilmington was type-written all in capitals.

Q. All of these documents are in capitals?

A. No.

Q. That eliminates D-A, then?

A. (Through Interpreter): I think to have concluded that the document I saw in Wilmington had the same number of rolls, the same description, the same number of pounds, and possibly the same amount of freight. And, obviously, I observed at that time that—I could have observed at that [795] time that the document shown to me was a larger piece of paper than the bill of freight.

Q. Did you notice that the document that you observed in Wilmington showed that Dulien Steel Products Company of California was the consignee?

A. (Through Interpreter): I didn't become aware of that.

Q. But you are sure that it was a bill of lading that you saw?

Mr. Bunn: An original bill of lading?

Mr. Diether: Or a copy.

The Witness: (Through Interpreter): A conversation took place mainly between Mr. Sweeney and the Matson man, and it is possible that it was

(Testimony of J. B. Londono.)

a bill of lading. (In English) I say I remember I asked for the original to the man of Matson, and he told me that he can't show, because maybe it is in the cashier's hands, which cashier it was out of the office at that time, and I asked him for that document. (Through Interpreter) It was reproduced, you say? It was issued— (In English) issued. (Through Interpreter) That a document was issued without any exception as to the quality of the merchandise was damaged, and he told me that it was possible that Dulien had given a guarantee to Matson in Honolulu. [796]

Q. Did you ever inquire from the cashier of Matson whether or not they secured a bill of lading?

Mr. John Morrow: Just a minute. Matson moves to strike any reference to Matson having—the shipper having possibly given a guarantee to Matson, as not responsive and a conclusion.

Mr. Dasteel: I join in that.

Mr. Bunn: The conversation is the thing in issue apparently under the question, and he has told the whole conversation as he remembers it.

The Court: I think that is right. It was in Matson's office in the presence of one of their agents. [797]

\* \* \*

The Court: I overruled the objections before and held that Mr. Bunn had established a foundation, and the testimony was that the man went and got the documents. Now I do not think an interloper would go and get any documents and say,



(Testimony of J. B. Londono.)

well, I cannot get this because the cashier is not here, [798] etc.

The motion to strike is denied.

Q. (By Mr. Diether): Did you ever inquire from the cashier of Matson whether he secured the original bill of lading? A. No.

Q. Or whether he had it in his possession?

A. No, because at the same time the man of Matson in Wilmington told us that the cashier was out, was not available.

Q. But you didn't go back and inquire again from the cashier? A. No.

Q. Whether he had received the original bill of lading? A. No.

Q. After you went to the bank on August 24, who did you first talk to?

Mr. Bunn: After he went to the bank? You mean in the bank?

Mr. Diether: He said he went to the bank on August 24 with, I think, Mr. Bunn.

The Witness: Yes.

Q. (By Mr. Diether): Who did you first talk to that day? A. I saw Mr. Moran. [799]

Q. And you had a conversation with him?

A. Yes. I handed to him the document I called at that time the bill of freight and asked him if he got another document from Dulien in order to pay the credit.

He take the document, bill of freight, he look and he said, "I paid against another document, a larger piece of paper."

(Testimony of J. B. Londono.)

Q. And did Mr. Moran at that time telephone anyone in your presence?

A. Not that I remember.

Q. Did he at any time tell you during that same conversation on that day that he had called Dulien in connection with the matter? A. No.

Q. Didn't he tell you that he had called Mr. Stanley about whether or not he delivered to the bank a bill of lading on the morning of July 29?

A. No.

Q. You don't remember any such statement?

A. No.

Q. Did you call Mr. Moran on the telephone a few days later after you had been to Wilmington?

A. Not that I recall.

Q. Did you ever tell Mr. Moran about your being to Wilmington and the document that you saw there in Matson's [800] office?

A. Not that I recall now.

Q. In connection with the first shipment that you made on the Mormacreed of 112- $\frac{3}{4}$  tons, you stated that you paid to the bank \$3050. Was it the same time that you paid that sum of money to the bank that the bank agreed to permit you to ship the wire upon payment of \$27 per ton?

A. It is too long a question. Will you read it?

(The question referred to was read by the reporter as follows: "Q. In connection with the first shipment that you made on the Mormacreed of 112- $\frac{3}{4}$  tons, you stated that you paid to the bank \$3050. Was it the same time

(Testimony of J. B. Londono.)

that you paid that sum of money to the bank that the bank agreed to permit you to ship the wire upon payment of \$27 per ton?")

Mr. Diether: That is, payment on account of your note.

The Witness (Through Interpreter): Yes, and the amount speaks for itself. That is, that I paid the bank \$3050 for 112 tons. That means \$27 per ton.

Q. (By Mr. Diether): Did you go to the bank again and ask permission to ship the wire without payment of any further payment on account of your note?

A. I asked to the bank through Mr. Bunn.

Q. Did you have any conversation with any officer of [801] the bank?

The Court: About what?

Mr. Diether: About permitting him to ship any additional wire to South America without further payment of account of the note.

The Witness: I don't remember. I remember well that I had the permission through Mr. Bunn. I don't remember if in one of that conversation I was present, but the fact is I had permission from the bank to ship the wire.

Q. Didn't you tell the bank that you expected a letter of credit in a few days and that you would be able to pay off the balance of the loan?

The Court: When?

Mr. Diether: At the time that he went to the



(Testimony of J. B. Londono.)

bank in connection with the securing of permission to ship the additional wire to South America without payment on account of the note.

The Witness: No. At that time I knew that I could not get letter of credit from Colombia for this wire because I knew it was rusty. I knew that I could not produce bills of lading and—(through interpreter)—consequently I considered it dishonest on my part to ask for letters of credit under those circumstances.

Q. But you had no such conversation with any officer of the bank at or about that time relative to furnishing for [802] delivery to the bank another letter of credit to pay the balance due on your note?

A. At that particular time, I don't remember.

Mr. Diether: Let me see Plaintiff's Exhibit 42.

(The document referred to was passed to counsel.)

Mr. Bunn: Is that your document or mine?

Mr. Diether: It is yours.

Q. I show you Plaintiff's Exhibit 42, which is the agreement——

Mr. Hubert Morrow: Item 42?

Mr. Diether: Plaintiff's Exhibit 42.

The Court: It is a contract of some kind.

Q. (By Mr. Diether): ——between Londono and Gonzales & Blanco. Did you see that document at any time prior to its being executed by Mr. Bunn for or on your behalf?

(Testimony of J. B. Londono.)

A. (Through Interpreter): This contract had my approval.

Q. It states in that contract that there is about 962 tons of wire remaining on the dock. Did you know that at the time that that document was signed?

A. Yes.

Q. How did you know that?

Mr. Bunn: Do you mean did he know it was in there?

Mr. Diether: How did he know there was 962 tons on the [803] dock.

The Witness (Through Interpreter): It was a conclusion which we arrived, taking into consideration there was a shipment that had been made. And we used very clearly the word "approximately."

Q. (By Mr. Diether): Then you didn't actually know by physical count how many tons there were there?

A. No, impossible.

Q. Did you ever reject any of the wire that you received for excessive weathering?

A. I refused all the wire—(through interpreter)—but as my money had been paid I obviously had to save as much as possible.

Mr. Diether: May that answer be stricken as not responsive?

The Court: It is responsive. Motion denied.

Q. (By Mr. Diether): When did you reject all of the wire?

Mr. Bunn: You mean on what date?

(Testimony of J. B. Londono.)

Mr. Diether: That is right.

The Witness: On July 31st when I saw the wire in Moore-McCormack Line. I told Mr. Sweeney, "Don't ship that wire to South America." [804]

Q. (By Mr. Diether): Who did you tell that to?

A. I told him, "Don't ship the wire to South America." But later in the afternoon, during the night maybe. I was thinking that my money it was paid, that I didn't know who was going to take the responsibility, who was going to protect me, so I decided to save as much as possible.

Q. Then what did you do?

The Court: You mean what did he do next?

Mr. Diether: That is right.

The Court: This is the 8th day of hearing what he did.

Q. (By Mr. Diether): Did you notify Dulien that you had rejected the wire?

A. I wrote Dulien a letter, August 1st, and I say to him——

Mr. Bunn: The letter speaks for itself.

The Court: Yes. [805]

Q. (By Mr. Diether): Is that the rejection you are referring to?

Mr. Bunn: I object to the question.

Mr. Diether: Well, strike that.

Q. (By Mr. Diether): Did you ever reject any wire that you received and so notified Dulien, other than this letter of August the 1st?

Mr. Bunn: You mean in writing or verbally?

Mr. Diether: In writing or verbally.



(Testimony of J. B. Londono.)

The Witness (Through Interpreter): The fact is that I didn't want to entirely accept any wire, but I was forced by the circumstances, and I didn't write any letters about it.

Mr. Diether: I move that the answer be stricken as not responsive. I asked him if he made any rejections to Dulien. I don't think it is responsive, your Honor.

The Court: I think it is responsive, although not wholly. Did you make any other statement to Dulien than the letter of August 1st?

The Witness: I accepted the letter from Dulien dated August 7th, and on those circumstances——

The Court: You testified you wrote the letter of August 1st, and you saw him August 5th.

The Witness: I wrote one letter to him. Yes, your Honor. [806]

The Court: And you had the conversation of August 5th, and the conversation lasted until the 7th.

The Witness: Yes; nothing more in writing.

Q. (By Mr. Diether): After you received the letter of August 7th, you went ahead and on the basis of that letter you took the wire?

Mr. Bunn: I object to that question. He didn't so state.

The Witness: No.

Mr. Bunn: You are trying to make him speak conclusions.

Mr. Diether: Why, that is just what he said.

(Testimony of J. B. Londono.)

Mr. Bunn: He can state what he said at any time and what he wrote at any time, but you are now asking him to solve a legal problem which is going to be before this Court, as to what was the legal effect of the conversations and the letter, and I think it is improper for that reason.

The Court: Objection sustained.

Q. (By Mr. Diether): After you received the letter of August 7th from Dulien, you continued to take wire, didn't you (interpreted)?

The Court: Is there any doubt about that?

The Witness: That is my answer. (Through interpreter): The facts are that I was trying to prove over and over again what it was.

Mr. Hubert Morrow: That is just argument, isn't it? [807]

The Court: That is all it is.

Mr. Hubert Morrow: Based on those facts.

The Court: It is argument. There is no use in going over it over, over and over again, in an effort to try to get the precise words in the witness' mouth that you want.

The Witness: Why are we here? Because of the facts.

Q. (By Mr. Diether): Did you ever attempt to renegotiate the price of the wire from Dulien after you got the letter of August 7th?

Mr. Bunn: I object to the question as calling for a conclusion.

The Court: Objection sustained.

Q. (By Mr. Diether): Did you have any dis-

(Testimony of J. B. Londono.)

cussion with any representative of Dulien after August 7th relative to renegotiating the price of the wire?

A. After August 7th Mr. Dulien told Mr. Rendon in my presence that no negotiation because Gonzalez had taken the good wire.

Q. (By Mr. Diether): Anything else?

A. No.

Q. You said nothing further to any representative of Dulien about renegotiating the price of the wire?

Mr. Bunn: He says they told him there was no use in renegotiating.

Mr. Diether: Anything else? [808]

The Court: Counsel, do you mean to ask this witness now that he said nothing else after he has testified all about Mr. Bunn, and the letters, and the communications to the bank, and to Dulien, and the demands? Let's fix some time.

Mr. Diether: He has stated that he got this letter of August 7th.

The Court: All right.

Mr. Diether: And he has stated now that Dulien has told him he doesn't want to renegotiate because Gonzalez & Blanco took the best wire. Now, I want to know if he had any other conversation with any representative of Dulien about renegotiating the price of the wire, other than he has told us.

The Court: Other than he has told us?

Mr. Diether: Yes.

The Court: All right.



(Testimony of J. B. Londono.)

The Witness: No, not that I remember.

Q. (By Mr. Diether): Now, when did you first learn that you were short 81 tons of wire? [809]

\* \* \*

The Witness (Through Interpreter): When I was in Colombia, Mr. Bunn informed me that after removed the wire for Gonzalez & Blanco was a shortage. Whatever that day was, I don't remember. (In English): I have answered that three times, I think.

Q. (By Mr. Diether): Was it in 1947?

A. '46 or '47.

Q. Now, you have testified about certain percentages of quality of wire that you received. Can you tell us——

Mr. Bunn: That he shipped.

Mr. Diether: He said he got, as I remember, 1,919 tons. Now, of that wire you received, which is 1,919 tons, how many [810] tons of that quantity was equal to the roll of black wire which is marked here as Plaintiff's Exhibit 54, for identification?

Mr. Bunn: If you know.

The Witness (Through Interpreter): This is something that I cannot make a precise estimate on. I have already testified to the quantity of wire that was of the different conditions.

Q. (By Mr. Diether): Can you tell us in percentage what percentage of the total quantity of wire you received was equal to the roll which is

(Testimony of J. B. Londono.)

marked Plaintiff's Exhibit 54, which is the black roll?

A. (Through Interpreter): More or less, it is 20 per cent.

Q. What percentage did you receive of the total quantity, that is 1,919 tons, of the next roll, which is Plaintiff's Exhibit 53, for identification?

A. Excuse me, Mr. Diether. I am referring at this time to the quantities I shipped.

Q. I am asking you of the whole 1,919 tons that you received, what quantity was equal——

A. No, because I was not present when Gonzalez moved the wire from the dock.

Q. Didn't you see it on the dock?

A. I saw it on the dock, but—(through interpreter) I [811] didn't examine roll by roll, but I saw it all as rusty.

Q. How could you make an estimate of the quantities of the different kinds of wire that you shipped, and you can't make an estimate of the percentage of the total quantity that you received?

Mr. Bunn: I think that is argumentative. I object to it upon that ground.

Mr. Diether: Why is it he could do it in one case and why can't he do it in another?

Q. (By Mr. Diether): How did you arrive at it in one case?

The Court: Overruled.

The Witness (Through Interpreter): The wire that was removed from Long Beach pier to the piers of Moore-McCormack and Grace—(In Eng-

(Testimony of J. B. Londono.)

lish) Grace Line—(through interpreter), were examined by me, while the ones that was left was not examined as closely. And, also, because in Colombia I was informed as to the quality of the wire received there.

Q. (By Mr. Diether): Do you base your percentages which you gave in Court the other day on what somebody told you in Colombia, or what you actually saw yourself?

A. I saw myself. [812]

\* \* \*

Q. (By Mr. Diether): Mr. Londono, I call your attention to page 223 of your deposition, beginning at line 16, over to and including line 12 on page 224.

The Court: What was the beginning page?

Mr. Diether: 223, your Honor.

The Witness: Line?

Mr. Diether: Line 16.

The Witness (Examining deposition): Yes.

Q. (By Mr. Diether): Did you testify at the time your deposition was taken as follows:

“Q. Mr. Londono, did you ever exercise your right under this contract dated July 12, 1946, and reject 300 tons of barbed wire?

“A. I did not have the opportunity to exercise that right because in accordance with information [814] received from Gonzalez & Blanco, Dulien removed what they think to be 300 tons before Gonzalez finished taking the wire that they purchased from me.



(Testimony of J. B. Londono.)

“Q. Do you recall on what date Dulien took this 300 tons of wire that you refer to?

“A. No.

“Q. Was it before Gonzalez & Blanco started to take their wire?

“A. No, it was during the time that Gonzalez was moving their wire.

“Q. Then as I understand it, you never have notified the Dulien Steel Company that you were rejecting 300 tons of this wire that you did receive which amounted to around 1919 tons?

“A. No. During my visit to the Dulien office with Mr. Bunn on September 4 I notified Dulien that I reject all of the wire.”

Did you so testify at the time your deposition was taken?

A. Yes. And I don't change that testimony.

Q. Is that testimony that I have just read to you from your deposition, is that the truth?

The Court: He said, “I don't change that testimony.”

The Witness: Yes.

Mr. Diether: Thank you. [815]

Q. How many rolls of wire did you receive in this 1919 tons? A. I don't know by rolls.

Mr. Diether: What was that?

Mr. Bunn: He said, “I don't know by rolls.”

The Court: He answered, “I don't know by rolls.”

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): Did you receive any 28-pound rolls? A. Yes.

Q. How many?

Mr. Bunn: If you know.

The Witness: I don't know how many.

Q. (By Mr. Diether): Were they all galvanized wire? A. A few galvanized and a few black.

Q. They were both black and galvanized?

A. I have the report from Cartagena about that particular load when we shipped the small coils. Would you like to hear that report?

Mr. Diether: Would you read the answer, Mr. Reporter?

(The answer referred to was read by the reporter as follows: "A. I have the report from Cartagena about that particular load when we shipped the small coils. Would you like to hear that report?" [816])

Q. (By Mr. Diether): You don't know how many rolls, how many 28-pound rolls of wire you received in that 1919 tons?

The Court: He just got through saying he did not. [817]

Q. (By Mr. Diether): After you shipped the 1,051 tons to South America, when did you instruct Mr. Mattoon, or Mr. Sweeney, not to ship any more wire to South America?

Mr. Bunn: I object to the question. It assumes a fact not in evidence. He has not so testified.

The Court: Objection sustained.

Q. (By Mr. Diether): Did you ever at any

(Testimony of J. B. Londono.)

time instruct Mr. Sweeney not to ship any wire to South America?

Mr. Bunn: At any time at all?

Mr. Diether: Well, after he had begun shipping wire to South America.

The Court: You mean, not to ship any wire at all?

Mr. Diether: No. I think the witness has testified that he shipped 1,051 tons. The instructions he gave to the bank were to ship 2,000 tons of wire to South America.

The Court: He has also testified that he told Mr. Sweeney not to segregate or ship the last rusty wire.

Q. (By Mr. Diether): Now, I want to know when he told Mr. Sweeney not to continue to ship the wire, after the 1,051 tons were shipped.

A. After the shipment of 500 tons to Buena-ventura, it was— (through Interpreter) it was moved— (in English) from Pier 1-A, Long Beach, to Grace pier.

Q. Was that in September?

A. It was about September, Mr. Diether. [818]

Q. About September 1st?

Mr. Bunn: Do you know exactly?

The Witness: No. It was——

Q. (By Mr. Diether): Sometime in September?

A. Sometimes in September, or October, or November.

Q. I desire to show the witness items Nos. 41, 44 and 45 on Defendant bank's list, and which



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have been marked by the clerk as Exhibits C-Q, C-R and C-S, for identification. I have shown them to all counsel.

(The documents referred to were marked Defendants' Exhibits C-Q, C-R, and C-S, for identification.)

Q. (By Mr. Diether) (Continuing): I show you a letter from Indies Terminal Company to Mattoon & Company, dated January 29, 1947, which is Defendants' Exhibit C-Q, for identification. Have you ever seen that letter before? A. No.

Q. Did Mr. Sweeney ever discuss with you the wire which is therein referred to——

Mr. Bunn: I object to that.

Q. (By Mr. Diether): ——which is 610 rolls?

Mr. Bunn: I object to that question as incompetent, irrelevant and immaterial. It ties the question into a document which the man says he has never seen before. Now, he must eliminate his language in the question from that paper. [819]

Mr. Diether: Yes, I have. I asked him if Mr. Sweeney had ever discussed with him the 610 rolls.

Mr. Bunn: Mentioned in that letter, you say?

Mr. Diether: Well, located on the Moore-McCormack dock on or about January of 1947.

The Witness: I testified yesterday that in April, 1947, Mr. Sweeney of Mattoon & Company told me that some barbed wire, it was at Moore-McCormack dock; that I went to Moore-McCormack dock, that I identified like my wire, and I did

(Testimony of J. B. Londono.)

ship it to Colombia in order to avoid the— (through interpreter) demurrage— (in English) and the exact quantity was 477 rolls of rusty wire.

Q. (By Mr. Diether): Did you ever tell Mr. Sweeney you wanted to abandon that wire (interpreted)?

A. (Through Interpreter): I didn't tell him. I actually abandoned the wire.

Q. I show you Defendants' Exhibit C-S for identification. Have you ever seen the original of that letter or the copy which I am now showing you?

A. No.

Q. I show you Defendants' Exhibit C-R, for identification, which purports to be a letter from Mattoon & Company to Indies Terminal Company, dated April 24, 1947. Did you ever see the original or a carbon copy of that letter?

A. No, I haven't seen the letter. [820]

Q. Did you sell that wire that you shipped to South America in April of 1947 with the charges paid, or did you put it free on board here in Los Angeles, or did you sell it in South America?

Mr. Bunn: F.O.B. in South America?

Mr. Diether: F.O.B. in South America.

The Witness: I sold the wire after the wire arrived, after duty payments and all expense payments.

Q. (By Mr. Diether): Well, how much net did you receive per ton for that wire?

A. I received five pesos, five Colombian pesos per coil.

(Testimony of J. B. Londono.)

Q. How much net did you receive for it, then, in American money?

A. The equivalent, you say?

The Court: How many coils? You have said five pesos per coil?

The Witness: Yes, your Honor.

The Court: Do you remember how many coils there were?

The Witness: 477.

Q. (By Mr. Diether): Were those 100-pound coils? A. 100-pound coils.

The Court: What was the rate of exchange at that time?

The Witness: About 1.96, your Honor.

The Court: That is about 1.96 Colombian pesos to one [821] American dollar?

The Witness: 1.96 per American dollar.

Mr. Bunn: That is 1.96.

The Court: Yes.

Mr. Bunn: Is not the actual figure reported in the answers to the interrogatories?

The Witness: My calculation was made at the time of the deposition. I said about \$7.50 per ton net. That means after I paid the freight here, the dock charges in Colombia, the duty. The duty was reduced by the customs 70 per cent, because the wire was rusty.

Q. (By Mr. Diether): In other words, you got \$7.50 per ton net here in Los Angeles?

A. No, net in Colombia.

Q. Net here in Los Angeles? [822]



(Testimony of J. B. Londono.)

\* \* \*

Cross-Examination

By Mr. John Morrow:

Q. Mr. Londono, I show you Exhibit 7, the original freight bill. As I understood your testimony, you stated that you discovered Exhibit 7, that is, the freight bill, was not a bill of lading about August 24, 1946, when you talked to Mr. Koppel? A. August 23.

Mr. Diether: August 23rd, the witness said.

Q. (By Mr. John Morrow): August 23rd. Excuse me. A. Yes.

Q. Then on the next day, August 24, you talked to Mr. Sweeney about that document?

A. Yes.

Q. And you told Mr. Sweeney what Mr. Koppel had told you? A. I think so.

Q. And at that time you asked Mr. Sweeney if he had ever received any other document from the bank? A. Yes.

Q. And as I understand it, Mr. Sweeney then stated to [823] you that the freight bill was the only document which he had ever received, or which had ever been delivered to him by the bank?

Mr. Diether: Just a moment, your Honor please. I would like to object to that as being hearsay testimony so far as the bank is concerned.

The Court: You can reserve your motion to strike it. Motion denied.

(Testimony of J. B. Londono.)

Mr. Diether: May all this testimony be subject to the same objection?

The Court: It is subject to your objection and subject to your motion.

Mr. Dasteel: Same objection.

The Witness: Will you read the question?

(The question referred to was read by the Reporter as follows: "Q. And as I understand it, Mr. Sweeney then stated to you that the freight bill was the only document which he had ever received, or which had ever been delivered to him by the bank?"

The Witness: Yes.

Q. By Mr. John Morrow): You and Mr. Bunn went to the bank on August 24, 1946?

A. Yes. [824]

Q. And had a conference with various officers of the bank, did you not? A. Yes.

Q. The officers present at that conference included the president, Mr. Ivey?

A. I think so.

Q. Mr. Fosvett and Mr. Emshoff?

A. I am sure about Mr. Fosvett and Mr. Emshoff.

Q. Mr. Bunn and yourself?

A. And Mr. O'Neil.

Q. And Mr. O'Neil, representing the bank at that time? A. Yes.

Q. You had seen Mr. Moran in the bank that same day before you had the conference with the bank officers?

(Testimony of J. B. Londono.)

A. Yes. The first person I saw in the bank that day was Mr. Moran in the foreign department before the conference with the other officers of the bank.

Q. And at the conference with the bank officers on that day Mr. Bunn stated in your presence, did he, to the officers of the bank that the bank had paid Dulien against the freight bill instead of a bill of lading? A. Yes.

Q. And Mr. Fosvett answered that he knew nothing about it because he was not in charge of the foreign department? A. Yes. [825]

Q. And Mr. Fosvett also stated to you and Mr. Bunn at that time that he would telephone Mr. Schroeder in Oregon where he was on his vacation?

A. Yes, that he will try to reach Mr. Schroeder.

\* \* \*

Q. After that conference on August 24th with the officers at the bank and before you filed this action, which I believe was in July, 1947, did Mr. Fosvett or anyone else in the bank or connected with the bank ever state to you that the bank had not paid Dulien against the freight bill?

A. Not that I remember. [826]

\* \* \*

Q. In other words, you do not recall that any such statement was made, is that what you mean?

A. No.

Mr. Bunn: Sometimes when he says "no"—you asked him a question in the negative and he an-



(Testimony of J. B. Londono.)

swered in the negative. You had better be sure you understand each other.

Q. (By Mr. John Morrow): To clear the matter up, is it your best recollection at the present time that no such statement was made to you or any simliar statement?

The Court: Such or similar? I think maybe we had better be a little more literal with this witness.

\* \* \*

Q. Do you recall any similar statement having been made to you by Mr. Fosvett or anyone connected with the bank? [827] A. No.

Q. At any time after August 24, is that correct? A. No.

The Court: What do you understand by "similar statement"?

The Witness: The same fact in different words.

The Court: If the bank had told you that they had paid on a bill of lading, would you consider that a similar statement to the one that they had not paid on a bill of freight?

The Witness: No, your Honor.

The Court: That is a similar statement.

Q. (By Mr. John Morrow): I will ask you if at any time after the conference on August 24, 1946, did Mr. Fosvett or any other officer or person connected with the bank state to you that the bank had paid on the freight bill? [828]

\* \* \*

(Testimony of J. B. Londono.)

The Court: Paid Dulien on a bill of lading, is that what you mean?

Mr. John Morrow: Paid Dulien on a bill of lading.

The Witness: No.

Q. (By Mr. John Morrow): Or make any statement in substance or in effect similar or the same?

Mr. Diether: That is just asking the same question.

The Court: When I asked the witness a moment ago if he considered something similar he said he did not, so I think you had better be more literal, counsel.

Q. (By Mr. John Morrow): Do you understand what "substance" means, Mr. Londono?

A. (Through Interpreter): Yes, I understand.

The Court: Did they make a statement like that but not in those words?

The Witness: No, your Honor.

Q. (By Mr. John Morrow): About August 29, 1946, in the afternoon, you met Mr. [829] Moran of the bank on the corner of Fourth and Spring Streets, did you? A. Yes.

Q. You had a conversation with him, as I understand it. A. Yes; long conversation.

Q. And you told him that you had many troubles on account of the wire and that you could not sleep?

A. Yes.

Q. And Mr. Moran stated to you at that time that he also could not sleep because he had made a

(Testimony of J. B. Londono.)

mistake in the bank?      A. Yes.

Q. Mr. Moran also told you at that time that nobody in the bank wanted to take the responsibility of the mistake?      A. Yes.

Q. Or of the error?

A. He used the word "mistake."

Q. He used the word "error," did he?

A. Mistake.

Mr. Diether: He said mistake.

The Witness: The conversation that took place in Spanish, error or mistake are the same.

The Court: What is error?

The Witness: Error. It is equal—— [830]

The Court: To mistake?

The Witness: Mistake or error is the same.

Q. (By Mr. John Morrow): And it was during that same conversation that Mr. Moran asked you about the opportunity for him to get work in South America?

A. He asked me about the condition of work in South America, and I told him that in South America there are many opportunities for people like him that speak English and Spanish.

Q. Did he indicate to you that he was inquiring in that respect about work for him?

A. No. [831]

\* \* \*

The Witness: At the same time before the conversation finished, he told me that the bank asked him a statement of his conversations with me, telephone conversation with me, the day of the 29th of July.



(Testimony of J. B. Londono.)

Q. (By Mr. John Morrow): Mr. Londono, my question went as to anything that was said about South America. Was there anything else said about South America?

A. No, but I understood you to say that that was all the conversation.

Q. I am speaking of South America.

A. I see.

Q. And on September 4, 1946, you and Mr. Bunn went to Dulien's office and had a conversation with Mr. Grinstein? A. Yes. [832]

Q. And Mr. Bunn in your presence stated to Mr. Grinstein that the bank had paid Dulien on the letter of credit against the freight bill and not on the bill of lading?

\* \* \*

The Witness: Yes. [833]

\* \* \*

Q. And when Mr. Stanley was present, Mr. Grinstein repeated Mr. Bunn's statement?

A. Yes.

Q. That is, Mr. Grinstein in front of Mr. Stanley? A. Yes. [834]

Q. Mr. Stanley then stated that he had left the bill of lading at Matson's Wilmington office and had presented the freight bill to the bank instead of the bill of lading?

\* \* \*

The Witness: Yes.

The Court: And I think Mr. Stanley also said

(Testimony of J. B. Londono.)

he had left the bill of lading at the office. That was your question?

Mr. John Morrow: That was my question, your Honor.

Q. (By Mr. John Morrow): After Mr. Stanley made the statement just referred to, did Mr. Grinstein appear to be angry?

\* \* \*

The Witness: Mr. Grinstein by his expression show him very angry, and told Mr. Stanley don't talk on that matter and that matter will be—(through Interpreter) that matter would be transferred to Mr. Dulien's attorney. [835]

\* \* \*

Q. (By Mr. John Morrow): As I understand it, Mr. Londono, you first saw some chalk marks on the dock at Long Beach where the ship was unloaded around the 5th of August, 1946?

\* \* \*

The Witness: I am sure that the first time I saw the marks, the chalk marks on the dock, it was the 5th, when I was with Mr. Grinstein there, but—(through Interpreter) but I cannot be as certain that I didn't see them before, or that they were not there before. [836]

\* \* \*

Q. (By Mr. John Morrow): Yes. Those were the chalk marks that had the names on them?

A. Of Dulien Steel Products and Gonzalez &

(Testimony of J. B. Londono.)

Blanco. On the big pile, the biggest pile on the right, Gonzalez & Blanco, and on the left looking to the boat, it was Dulien Steel Products.

Q. Did you at any time on that occasion when you first saw the chalk marks or at any time afterwards ever see any marks on the dock with the name of Londono?      A. No, never.

\* \* \*

### Cross-Examination

By Mr. Laven:

Q. Mr. Londono, you have mentioned that Mr. Rendon was with you on several occasions. Will you tell us why he was with you on these occasions when you went down to the Dulien Steel Company's offices?

Mr. Bunn: I object to the question. It calls for a [837] conclusion and does not go to any of the issues in the case.

The Court: It is cross-examination. I think he may ask about that. Answer the question.

The Witness: Will you please read it?

(The question was read by the Reporter.)

The Witness: Mr. Rendon was practically my agent.

Mr. Laven: I couldn't hear that.

The Court: "Mr. Rendon was practically my agent."

The Witness: —in any my transactions here in California during February, March, May, June,



(Testimony of J. B. Londono.)

July, until November. He know the place. He has a car. He drove all places, and I offer him commission for all my business here in California. [838]

\* \* \*

The Court: What was your relationship with Mr. Rendon in connection with that transaction?

The Witness: He was my closest friend at that time. He drove me, he was with me at Dulien's place July 11th. He was——

Mr. Laven: During the time——

The Court: Wait a minute. He is trying to answer your question.

Mr. Laven: I am sorry.

The Court: He wasn't talking to you then.

The Witness (Through Interpreter): He was companion. He was an observer.

The Court: Did you have any agreement with him prior to that time that he was to receive any compensation for any work he might do in either driving you, or anything else in that connection?

The Witness: Yes, your Honor. I used to pay commission to him. Not on that particular transaction, we didn't make [841] the agreement.

The Court: But on that transaction at the Dulien Steel Company you did not make the agreement?

The Witness: No, before, not later. Not on that particular transaction.

The Court: On that transaction you did not have any agreement with him?

The Witness: No, your Honor.

(Testimony of J. B. Londono.)

The Court: Did you later pay him a commission on that?

The Witness: No. May I say my recollection is that at the time Mr. Stinson and Mr. Tuthill were at the Dulien office on the 12th, they agree between Mr. Tuthill, Mr. Rendon and Mr. Stinson that the commission that Dulien was going to pay will be—(through Interpreter) split in three parcels—(in English) one for Mr. Tuthill, one for Mr. Stinson, one for Mr. Rendon—(through Interpreter) and, to my knowledge, it was not complied with by Mr. Stinson and Mr. Tuthill.

The Court: It was not complied with?

The Witness (Through Interpreter): It was not complied. As this business meant for me so much loss, Mr. Rendon didn't ask me for any compensation.

Q. (By Mr. Laven): Mr. Londono, is that the only reason why you didn't pay Mr. Rendon, because you lost so much money on this [842] transaction?

A. Yes, and I suppose—(through Interpreter) and if I know that Tuthill and Stinson didn't pay him anything, I would have paid him some commission.

Q. Mr. Londono, did you not first learn that his wire was available at Dulien Steel of California through Mr. Rendon?

A. Will you read that question again?

(The question was read by the Reporter.)

(Testimony of J. B. Londono.)

A. Yes. [843]

Q. And what was Mr. Rendon's business at the time that you learned that this wire was available from Dulien Steel?

A. He was in export business here in Los Angeles.

Mr. Diether: What was that?

The Court: Export business here in Los Angeles.

Q. (By Mr. Laven): And when Mr. Rendon first told you about this wire being available, did he tell you at that time the amount of commission that he expected to be paid if you made the purchase? A. No.

Q. Now did you have any previous agreement with him or arrangement as to what commission he was to receive for locating or finding the barbed wire for you? A. Not in particular.

Q. Did you have any kind of an arrangement or understanding—maybe you understand that word better? A. Not in particular.

Q. Well, did you pay him anything as to compensation?

Mr. Bunn: He said he paid him nothing. [844]

\* \* \*

The Court: What is the materiality of this?

Mr. Laven: The materiality, your Honor, is if Mr. Rendon acted as his agent at that particular time, what arrangements he had with him at the time that the deal was consummated may have a



(Testimony of J. B. Londono.)

particular bearing upon the transaction in so far as the liability of the various defendants is concerned.

Mr. Bunn: I cannot see it. I object to it as immaterial.

The Court: I cannot see it. You mean you expect to develop that Mr. Rendon did certain things which have not yet been disclosed? [845]

Mr. Laven: No, I believe that by establishing that there was an agency between Mr. Londono and Mr. Rendon that when he was along with him at the time the contract was entered into, that Mr. Rendon was there for the purpose of explaining to and acting as the agent of Mr. Londono.

The Court: You mean as his interpreter?

Mr. Laven: Yes.

The Court: He has testified that he had Mr. Rendon interpret occasionally for him, explain things to him.

Mr. Laven: As a friend, your Honor, not as an employee. I think there is a great deal of difference.

The Court: What difference does it make? I cannot see it, counsel. Suppose he had an agreement with Rendon that he was going to pay him a commission if he found this wire and made a deal. What difference could it possibly make in the liability of the United States?

Mr. Laven: It could make this difference, your Honor, that if this man acted as his agent and he relied upon his agent to interpret the contract to him, and the contract was not ambiguous, it was

(Testimony of J. B. Londono.)

clear as to excessive weathering and as to the amount of wire that was to be rejected, then he fully understood the terms of the contract at that time and his claim that he didn't understand it, which he has already testified to, there would be a conflict in that testimony. He has gone into it on direct and I believe that we have a right [846] to go into it on cross.

The Court: I do not believe that he said that he did not understand it. He said he did not pay any particular attention to that portion of it. He said that he reads and understands English.

Mr. Laven: I believe so far as the words "excessive weathering," I don't believe he said he didn't understand that.

The Court: No.

Mr. Diether: No, that is not my understanding.

The Court: He never made any claim that he did not understand it. [847]

\* \* \*

Q. Mr. Londono, did you read the contract?

A. I supposed to read the contract. I signed the contract. I have testified on that matter.

\* \* \*

Q. Were you present in the office of Dulien Steel Products, Inc., on July 12, 1946, when Plaintiff's Exhibit 2-A was being prepared?

A. Yes.

Q. Do you know who dictated the terms and conditions that are contained in Exhibit 2-A?

(Testimony of J. B. Londono.)

A. Yes, Mr. Grinstein to Mr. Stanley. [848]

\* \* \*

Q. Were you present when Exhibit 2-A was dictated by Mr. Grinstein? A. Yes.

Q. Did you hear him dictate to Mr. Stanley the words, "acceptance of material subject to rejection by buyer of not more than 300 tons due to excessive weathering"? [849]

A. (Through Interpreter): I could have heard it but I didn't take it into consideration.

\* \* \*

Q. Mr. Londono, you read Plaintiff's Exhibit 2-A, did you not, before you signed it?

A. I have in my presence, I had it in my presence, I supposed to read and take into consideration the quantity, about the gauge, price and maybe I read all the contract and—(through Interpreter) I didn't find any objection and that is why I signed it. [850]

Q. Did you read the words—

Mr. Diether: Just a moment. May we hear that last answer?

The Court: I did not find any objection and that is why I signed it. That is almost the identical answer he gave when somebody else asked him that question.

\* \* \*

Q. (By Mr. Laven): Mr. Londono, you received the samples, which are Exhibit 36, on July 11th, did you not?



(Testimony of J. B. Londono.)

A. I say that I am 99 per cent sure that it was the 12th. I testified to that. [851]

\* \* \*

Q. At the time these samples were given to you, which are Exhibit 36, Mr. Londono, did you notice the red particles that are on these samples?

A. (Examining samples.)

Q. Or red appearance?

A. I did not perceive them.

Mr. Laven: What was that?

The Court: You asked him if he noticed them and he said he did not perceive them.

Q. (By Mr. Laven): Mr. Londono, are these samples in substantially the same condition, so far as the red appearance is concerned, as when you obtained them from Mr. Grinstein on July 12, 1946?

The Court: Counsel, I wonder if you would indicate to [852] me what you consider red. The word is going into the record.

(The sample referred to was passed to the court.)

Mr. Laven: There are some particles of red all over these, your Honor.

Mr. Diether: May they be marked with a separate number?

The Court: Have you some expert, a color man here? I cannot see red on that.

Mr. Laven: I can, your Honor.

(Testimony of J. B. Londono.)

(The sample referred to was passed to the court.)

The Court: This is a little brownish but I certainly do not see anything that deserves to be designated red in the record.

Mr. Laven: May we have each of these marked separately?

The Court: Hand me the rest of them, the red particles. You designate to me, Mr. Laven, what you consider to be red as you hand them up to me.

(The samples referred to were passed to the court.)

The Court: Did you have a spyglass there?

The Witness: No, your Honor.

Mr. Laven: May we have this one marked? I particularly call attention to the barbs, near the barbs, there is a red or brownish appearance. Maybe my color isn't quite good. Or it may be maroon.

The Court: You want this one marked especially?

Mr. Laven: Yes, your Honor. Each one of them. [853]

(The sample referred to was marked Plaintiff's Exhibit 36-A for identification.)

The Court: What is that?

Mr. Laven: That will be 36-B.

(The sample referred to was marked Plaintiff's Exhibit 36-B for identification.)

(Testimony of J. B. Londono.)

Mr. Laven: The next one is 36-C.

(The sample referred to was marked Plaintiff's Exhibit 36-C for identification.)

The Court: Where is the red here?

Mr. Laven: Near the barbs, your Honor, in each of the barbs and along the double twist of the wire.

The Court: I will say for the record that I cannot see any red.

Mr. Laven: Or maroon or brown.

The Court: There is a slight little brownish tinge. I can barely see that on here even with this glass, in between the barbs, but there is no red.

Mr. Laven: I would say it is maroon or brownish. Maybe my color designation isn't quite correct.

Next one is 36-D.

The Court: This is 36-D.

(The sample referred to was marked Plaintiff's Exhibit 36-D for identification.)

Mr. Hubert Morrow: 36-D has some color, your Honor. [854]

The Court: 36-D has some brownish color on one of the barbs.

Mr. Hubert Morrow: It isn't as red as your necktie, but it is on the reddish side.

The Court: It is rust color, brownish.

Mr. Dasteel: That designates it.

Mr. Laven: All these I have been referring to possibly are rust color instead of red.



(Testimony of J. B. Londono.)

The Court: Or Hawaiian dust color.

Mr. Laven: That I will agree to, your Honor.

The Court: I cannot see it.

Mr. Hubert Morrow: Here it appears to be maroon.

Mr. Bunn: I don't stipulate to that at all.

Mr. Hubert Morrow: Here is some maroon right where I am indicating.

(The sample referred to was passed to the court.)

The Court: Yes, there is some slight discoloration there.

Mr. Bunn: Where is it located, if I may ask?

The Court: It is located on the upper strand of the wire as I now hold it in my hand, and it is about a quarter of an inch in length and brown; there is some kind of smear here.

Mr. Bunn: And is it visible to your Honor only through the magnifying glass?

The Court: No, I can see that there is something there. [855]

It is 36 next in order.

(The sample referred to was marked Plaintiff's Exhibit 36-E for identification.)

The Court: On this one which you were just looking at, where that red is, that rust color, I am going to take my thumbnail here and scrape a bit of it and see if it is still red (demonstrating). There is a little reddish color yet.

(Testimony of J. B. Londono.)

Mr. Laven: On 36-E, on the end of the wire, rather by the edge of the barbs and along the twist of the wire, is the same rusty color, rusty tinge.

(The sample referred to was passed to the court.)

The Court: It is very slight.

Mr. Bunn: I move to strike counsel's statement. He is not testifying.

The Court: I am observing it and I am the one who is going to have to judge it, and I will say if there is any rust on that it is very, very slight, and the evidence of rust on any of them that have been given to me so far is very, very slight.

(The sample referred to was marked Plaintiff's Exhibit No. 36-F for identification.)

Mr. Laven: Would your Honor say barely on this one?

(The sample referred to was passed to the court.)

Mr. Bunn: Are you trying to get a word in with the court testifying to connect with somebody else later? [856]

The Court: No, the same is true of this.

Mr. Laven: May we have each one of these marked? And here is the last one.

The Court: And the same is true of this one.

(The sample referred to was marked Plaintiff's Exhibit No. 36-G for identification.)

The Court: On this piece of wire which has just

(Testimony of J. B. Londono.)

been handed to me, somebody has apparently taken a piece of metal and scraped one end of one of the strands so that it appears as white metal underneath.

Mr. Laven: What number is that?

The Court: I do not know. Whatever it is.

Do you want the spots on there marked separately?

Mr. Laven: No, your Honor. There are too many of them, I am afraid.

Mr. Bunn: I move to strike that remark of counsel.

The Court: There are plenty of letters in the alphabet for numbers to be used.

The Clerk: The last one will be No. 36-G, your Honor. [857]

\* \* \*

Mr. Laven: Do you have the last question?

The Court: I think the last question was whether or not he saw the red spots.

Mr. Laven: The rust-colored spots, may it please your Honor.

Q. (By Mr. Laven): Mr. Londono, did you notice—I call you attention to Exhibit 36-B and ask you if you noticed the particles of grease or foreign matter on that exhibit at the time that Mr. Grinstein gave you the samples?

A. (Through Interpreter): At the time I received the sample it had more grease, and all I could observe was the beautiful black color and fresh grease, wet.



(Testimony of J. B. Londono.)

Q. Let me direct your attention to the portion, the second space from the tag, and direct your attention to the light-colored material in that section as between the two barbs. A. Yes.

Q. And, also, to the dark-colored foreign matter. Did you notice that at the time?

A. (Through Interpreter): At the time that I observed the samples the wire had more grease on it, or maybe because since that time—43 months, I think you mentioned—that have taken place.

Q. I show you Exhibit 36-C, and draw your attention to the light portion or the light foreign matter in the [858] second space from the tag, and ask you if you noticed that foreign material on this sample at the time that Mr. Grinstein gave it to you? A. The same answer.

The Court: "The same answer," he says.

Q. (By Mr. Laven): Did you keep these samples in the same paper from the time that Mr. Grinstein gave it to you until you brought these into court, Mr. Londono?

A. I am not quite sure. I am sure this is the paper I—(through interpreter) I am sure this is the paper I used to give them to Mr. Bunn.

Q. Was this the same paper that you put them in after you received them from Mr. Grinstein on July 12, 1946?

A. I don't know if after I received from Mr. Grinstein.

The Court: Look on the paper and you will see some words "Crinoline oil," or something.

(Testimony of J. B. Londono.)

Mr. Dasteel: Not on that one, your Honor.

The Court: Is that on the other paper?

Mr. Dasteel: Yes.

The Witness: I can say is the paper I used to put the samples to deliver to Mr. Bunn.

Mr. Bunn: And let the record show what he has in his hand is the white paper, as distinguished from the buff paper.

The Court: Neither of the two pieces of paper have been [859] marked in evidence.

Mr. Laven: I think they should be, your Honor.

The Court: Very well. 36- what?

The Clerk: 36-H, your Honor.

The Court: 36-H.

Mr. Diether: Which one is "H"? The white one?

Mr. Laven: The white one.

\* \* \*

The Court: I haven't gotten quite straightened out. There appear to be three pieces of paper. There is a white piece of paper, there is a heavy brown piece of paper which looks suspiciously like a manila envelope as used in law offices, or a portion of it, and another larger piece of light-weight brown paper. 36-H, -I and -J, respectively.

(The documents referred to were marked Plaintiff's Exhibits 36-H, 36-I and 36-J, for identification, and were received in evidence.)

Q. (By Mr. Laven): Mr. Londono, I show you 36-1.

(Testimony of J. B. Londono.)

The Court: 36-1?

Mr. Laven: Yes. That was marked before.

The Court: Oh, that is the one——

Mr. Laven: That Dulien used. Yes.

Q. (By Mr. Laven): I draw your attention to the second [860] space from the tag, and ask you if you noticed the foreign material on that sample at the time it was given to you by Mr. Grinstein?

A. (Through Interpreter): I didn't see that foreign matter at that time, but inasmuch as no place where the wire has been it could have acquired it, I suppose—(in English) I admit—(through interpreter) that it was there.

Q. But you didn't see it?

A. I have answered.

Q. Did you not take these samples to an engineer friend of yours on 4th Street? A. Yes.

Q. And did you not there look at this wire under a microscope?

A. No microscope, but he inspect the wire. He saw the wire, and I have the name now here.

Q. What is his name?

A. The name is Herman J. Siemers, S-i-e-m-e-r-s, Inc., 236 East 4th Street, Los Angeles. And the engineer from Hunt, his name is Mr. H. L. Ebrigh, E-b-r-i-g-h, manager of the district, 658 Chamber of Commerce Building, Los Angeles, telephone Prospect 5892. These are the two gentlemen. (Through interpreter): These are the names of the two gentlemen that saw the wire when I brought the samples. [861]



(Testimony of J. B. Londono.)

Q. (By Mr. Laven): And what day was that, Mr. Londono?

A. About the first time, it was July 12.

Q. Were you there all during the time that they were making the examination? A. Yes.

Q. Or inspection of this wire?

A. Yes. And my best recollection now, Mr. Laven, I have been thinking about it and I am able to say that maybe Mr. Grinstein gave me more than seven pieces of this wire because I am sure that Mr. Siemens made the inspection—(through interpreter)—on one of the pieces, an inspection that necessarily would have taken the coating off the wire.

Q. Were you present during the time that he inspected the wire? A. Yes.

Q. And did he give you any report as to his findings? A. Yes, he find the wire good.

Q. What did he tell you?

Mr. Bunn: Let him finish.

Q. (By Mr. Laven): What did he tell you?

A. He told me that the wire was good, satisfactory.

Q. Did he tell you anything relative to the foreign particles that were on these samples? [862]

A. (Through Interpreter): Not in particular.

Q. Did he examine the same samples that you have produced into court here and are Exhibit 36 and all the subdivisions?

A. (Through Interpreter): He had in his hands all the samples and took one of the pieces. I don't

(Testimony of J. B. Londono.)

recall if this piece is among the samples that are here present.

Q. Tell us what you observed him do when he made the inspection of this wire.

A. I didn't observe anything outside that it was a good wire, unused, satisfactory.

Q. Possibly you didn't understand my question. What did you understand Mr.—what was his name?

A. Simmers, S-i-m-m-e-r-s. [863]

\* \* \*

Q. Well, on July 12 did you observe the wire under a microscope? A. No.

Q. Did you on the 13th or 14th?

A. Not at any time.

Q. Not at any time by you? A. No. [864]

\* \* \*

Q. Now, Mr. Londono, that is the extent of the examination that was made by Mr. Simmers?

A. (Through Interpreter): Mr. Simmers was not consulted by me as an expert but as a friend.

Q. But that is the extent, did he make any other inspection, other than what you have told us, just by looking at it?

A. He looked at the wire carefully, perhaps he will recall—he knew about the contract, I showed him the contract, and I told him that I bought the wire from those samples and—(through interpreter)—he told me it was all right. He didn't tell me that it was bad business, unfavorable, I would say.

Q. Did you show him this copy, that is, Exhibit

(Testimony of J. B. Londono.)

2-A, at the time that you showed him the samples of wire which are Exhibit 36 and its various subdivisions?

A. I suppose yes. I show him. Anyway, he knew about the deal that I bought 2,700 tons of wire from Dulien.

Q. Is he the only one on that day that made an inspection for you of the wire? A. Yes. [866]

\* \* \*

Q. And what is Mr. Ebrigh's business or occupation?

A. He is the manager of Hunt, and Hunt supposed to be—(through interpreter)—inspecting engineers of metals.

Q. Did you give the address where they are located? A. Yes.

The Court: Chamber of Commerce Building. Also the telephone number.

Q. (By Mr. Laven): When did he make the inspection? When did Mr. Ebrigh make the inspection, Mr. Londono?

A. Mr. Laven, he told me between July 12—

Q. Before July 12? [867]

A. Between July 12th and July 27th.

Q. Did he give you a written report?

A. No. I was with Mr. Rendon—(through interpreter) we didn't ask for a written report. He gave us his personal opinion and told us the wire was all right.

\* \* \*



(Testimony of J. B. Londono.)

Q. Now, Mr. Londono, in purchasing this wire from Dulien Steel Company of California, did you not rely upon the representations made to you by Mr. Grinstein and Mr. Dulien?

A. (Through Interpreter): I put all my faith on their word. That is the reason why I signed the contract and opened the credit at the bank.

Q. In other words, then, you relied upon what they [868] told you and upon the samples which they gave you?

A. (Through Interpreter): In view of the samples given to me and in view of the galvanized new rolls that was shown to me. [869]

Mr. Laven: May I ask——

The Court: I take it his answer is "Yes."

Mr. Laven: Is your answer "Yes"?

The Court: Including what he has stated.

Mr. Laven: Is your answer to my question "Yes"?

The Court: That you relied upon what they told you and the samples?

The Witness: Yes.

Q. (By Mr. Laven): One other question relative to that. And, also, the piles of black wire that they showed you in the yard on July 11th?

A. Of course, yes.

Q. Had you not believed those statements and the samples—if you had not believed the statements which they made to you, you would not have entered into this contract which is Exhibit 2-A?

(Testimony of J. B. Londono.)

A. Of course, no. [870]

\* \* \*

Q. (By Mr. Laven): Now, Mr. Londono, I draw your attention to Exhibit 51, for identification, and ask you how this roll of wire compares with the wire that you saw—the galvanized wire which you saw in Dulien Steel Company's place of business on July 11, 1946 (interpreted)?

A. (Through Interpreter): The wire that was shown to me at Mr. Dulien's had a brilliant color of new galvanized wire, while this is dirty and dull, a dull color, but is in the same condition, the same good condition.

Q. I don't understand your last statement, "in same good condition."

A. In good condition. I accepted the wire.

The Court: What he means to say is in that good condition, but the other looked new.

The Witness: Brand new, brilliant.

The Court: A bright color?

The Witness: Bright.

Q. (By Mr. Laven): In your opinion is Exhibit 51 for identification in good condition?

A. It is in good condition, it is usable wire. It is not brand new, but it looks like good wire, strong. It is not the wire I bought from Dulien, but—

Q. Well, this wire, is this Exhibit 51, for identification, [871] equal in strength, and as far as the sales price in South America was concerned?

Mr. Bunn: I object to the question as compound, uncertain, indefinite.

(Testimony of J. B. Londono.)

The Court: It is a little compound.

Mr. Laven: I will reframe the question.

Q. (By Mr. Laven): In your opinion is Exhibit 51, for identification, equal in quality to the wire which you saw at Dulien's—galvanized wire which you saw at Dulien Steel on July 11, 1946?

A. (Through Interpreter): Originally, the quality could have been the same, only this is a little bit dirty.

Q. Does the fact that this wire appears to be dirty affect its quality?

Mr. Bunn: That is a paradoxical question. That contradicts itself. I object to it as uncertain and indefinite.

Mr. Laven: I beg your pardon. I want to be heard.

Mr. Bunn: It might not have affected its sales, but it might have affected its quality.

The Court: Objection overruled. In his opinion——

The Witness (Through Interpreter): Perhaps it doesn't affect the quality, but it does affect the price.

Q. (By Mr. Laven): Mr. Londono, you had purchased other wire, had you not, from the War Assets Administration? A. Yes. [872]

Q. And was that galvanized wire?

A. It was black wire, rusty; and galvanized wire, too.

Q. (By Mr. Laven): Mr. Londono, you knew that the wire that you were purchasing, the barbed



(Testimony of J. B. Londono.)

wire that you were [873] purchasing from Dulien Steel, was not new wire?

\* \* \*

The Witness (Through Interpreter): I purchased the wire as new and unused, and the fact that it is surplus wire from the government doesn't imply necessarily that it would be old, because if it had been kept in a sheltered place, it would be new after a few years.

Q. (By Mr. Laven): Mr. Londono, you knew that the wire in Honolulu was not manufactured there, did you not?

The Court: What difference does that make? I bought a refrigerator and I knew it wasn't manufactured here, but it was new.

Mr. Laven: It is a foundation question, your Honor.

The Court: All right. Let's get on.

The Witness (Through Interpreter): I didn't know whether or not there were factories of barbed wire in Honolulu. I didn't take that into consideration. [874]

Q. (By Mr. Laven): Mr. Londono, did you not know that this unused wire that was purchased from the government had been shipped over to Honolulu during the war?

A. (Through interpreter): I was purchasing good wire. I didn't take into consideration whether it was made in New York or Los Angeles, or sent by boat or by airplane.

Q. Mr. Londono, did you count the number of

(Testimony of J. B. Londono.)

rolls of galvanized wire that were comparable in appearance to Exhibit 51, for identification, on the dock?

Mr. Bunn: Of the total 55,000, you mean?

Mr. Laven: Yes.

Mr. Bunn: And move them all by hand?

Mr. Laven: Kindly permit me—do not add to my question. It is complicated enough.

The Court: Yes, it is complicated.

The Witness: No.

The Court: He said, "No, he did not."

The Witness: No.

Q. (By Mr. Laven): Mr. Londono, did you count the number of rolls that were comparable to Exhibit 52 for identification? A. No.

Q. That were unloaded from the White Squall?  
A. No.

Q. Did you count the number of rolls that [875] were comparable to Exhibit 53, for identification,— A. No.

Q. —that were unloaded from the White Squall? A. No.

Q. Did you count the number of rolls that were comparable to Exhibit 54, for identification, unloaded from the White Squall?

A. No. (Through interpreter): And I didn't count the other rolls of different and poorer quality of wire that were on the dock at the time.

\* \* \*

Q. (By Mr. Laven): Do you know whether Mr.

(Testimony of J. B. Londono.)

Koppel was working for Gonzalez & Blanco in selecting the wire as it was [876] being unloaded from the White Squall on or about August 24, 1946?

A. (Through interpreter): I could not tell.

Q. Subsequently did you not employ Mr. Koppel to segregate the wire for you which came off of the White Squall?

\* \* \*

The Witness: Excuse me. (Through interpreter): The first contact I had with Mr. Koppel was through Mr. Moran at the bank, and afterwards Mr. Sweeney used the services of Mr. Koppel for the segregation of the wire on the dock.

Q. (By Mr. Laven): And that was on your behalf, Mr. Londono? That was for you?

A: Yes. [877]

Q. On which dock was that, Mr. Londono (Interpreted)?

A. (Through interpreter): The first time Mr. Koppel saw the wire was on Pier A-1, Long Beach. Afterwards, I don't know.

Q. Mr. Londono, calling your attention again to Exhibit 51, for identification, how much did you receive per ton for the wire that was comparable to this exhibit, for identification (interpreted)?

A. (Through interpreter): We didn't make any separation of the wire when sold to Mr. Echavarria. I received from him \$75 per ton, f.o.b., Los Angeles, and including all the wire, the good, the not so good, the bad, and the black. [878]

Q. That is, that the four samples you sold as



(Testimony of J. B. Londono.)

a lot, including Exhibit 54, for identification, 53, 52 and 51.

A. (Through interpreter): There were many other qualities perhaps poorer than the ones shown here.

Q. Do I understand that you included some rolls that were poorer than any of these samples here that are represented by these exhibits that you sold to Mr. Echavarria for \$75 a ton? A. Yes.

Q. About what portion of the wire that you sold to Mr. Echavarria, was represented by Exhibit 53 for identification?

A. I cannot precisely tell.

Q. What percentage of the wire that you sold to Mr. Echavarria was represented by the sample which is 52 for identification?

A. As to what was usable in Colombia, it would apply to this type of wire, the proportion was 50 per cent.

Q. 50 per cent of the wire that you sent to Mr. Echavarria and for which you received \$75 per ton is represented by Exhibit 52 for identification?

A. That is my estimate.

The Court: 50 per cent or worse, as I understood from his previous testimony. That is, it was similar to 52 or worse than 52—or was it 53? [879]

The Witness: 52, your Honor. I have no report of the number of rolls in each quality. Mr. Echavarria after some bargaining accepted to buy the

(Testimony of J. B. Londono.)

wire at \$75 per ton as a lot and I didn't think it was unjust.

Q. (By Mr. Laven): Of that lot that you sold him, more than 50 per cent was represented by 52 for identification? A. That is my opinion.

Q. Now can you tell us about what portion of the wire that you sold to Mr. Echavarria for \$75 a ton was represented by 54 for identification?

A. Mr. Echavarria accepted 25 per cent of good wire—accepted to call good wire 25 per cent of wire represented by 54 and 51, but he didn't make any separation as to quality of these two lots.

Q. Then your answer is that No. 54 represented about 25 per cent of the wire that Mr. Echavarria paid you? A. 51 and 54.

Q. Those two together represented 25 per cent?

A. Yes.

Q. And 53 and 52 represent 75 per cent of the wire for which he paid you \$75 a ton?

A. More or less. [880]

\* \* \*

Q. (By Mr. Laven): Now, Mr. Londono, you stated that you actually received 1919 tons of barbed wire, is that correct? A. Yes.

Q. How many additional tons of wire did you reject?

Mr. Bunn: I object to the question as uncertain and indefinite. I don't understand it myself.

The Court: How many additional tons?

Mr. Laven: How many tons of wire did he reject? [886]

(Testimony of J. B. Londono.)

Mr. Bunn: You said "additional."

Mr. Laven: In addition to the 1919 tons.

The Court: He did not reject the 1919 tons. He said he rejected all of them.

Q. (By Mr. Laven): Now, Mr. Londono, do you know how many tons of wire were shipped under L. A. bill of lading 29 on the White Squall?

Mr. Bunn: If you know.

The Witness: No.

Q. (By Mr. Laven): Do you know how many tons of barbed wire were unloaded from the White Squall under bill of lading L. A. 29?

\* \* \*

The Witness: No.

Q. (By Mr. Laven): You testified that you rejected certain wire which Dulien Steel Company took. Do you know how many tons were included in that amount which you rejected?

Mr. Bunn: I don't understand the question.

The Court: He testified he rejected all [887] of it.

Q. (By Mr. Laven): How many tons of wire did you not take delivery of, that came over on the White Squall?

\* \* \*

The Witness: 81 tons and 4.9 tons.

Mr. Laven: What is that?

The Witness: In other words, 86 tons.

Mr. Laven: That is not responsive to the question. Read it again, Mr. Reporter.

\* \* \*



(Testimony of J. B. Londono.)

The Court: Do you understand the question? It is not how many did you not get delivery of, but how many did you not take delivery of?

Mr. Bunn: I renew my objection. It is still like asking him how many dollars he did not make last year.

Mr. Laven: I think it is very material. There is a serious [888] charge made here that he didn't receive 81 tons and we want to know if there were 81 tons available on that ship that came over on that ship that he refused delivery of.

The Court: Let us ask him that. Why do you not ask him if he refused delivery of 81 tons?

Q. (By Mr. Laven): Did you refuse delivery of 81 tons of wire that came over on the White Squall under bill of lading L. A. 29?

A. (Through interpreter): I didn't refuse, it was a shortage. I didn't get them.

Q. Let me ask you this question: Was there any other wire available to you other than the 1919 tons?

A. I suppose no. [889]

Q. Well, did you see any other wire, other than the 1,919 tons of wire that you received on the dock at Long Beach?

A. (Through interpreter): I didn't count the wire. I was under the impression that it was a shipment of 2,300 tons——(in English) at L. A. 29, ——(through interpreter) at L. A. 29.

Q. And of the 2,300 tons Dulien—there was available for you 2,000 tons out of a 2,300-ton shipment on the White Squall (interpreted)?

(Testimony of J. B. Londono.)

A. (Through interpreter): Yes. When Gonzales wanted to complete delivery of his wire, he could not do it, because Dulien had already removed the balance.

Mr. Bunn: May I interrupt a moment?

The Court: Did you get 2,000 tons or 1,919 tons? What was the total quantity of wire that you got (interpreted)?

The Witness: 2,000 tons, less 81 tons.

The Court: Well, you got 1,919 tons, then?

The Witness: Yes, your Honor.

The Court: That's all the wire you got?

The Witness: Yes, your Honor. [890]

\* \* \*

Mr. Laven: I think we can. I don't think the witness understands——

The Court: I think he understands, but you are trying again to get him to say a word you want him to say.

Mr. Laven: No, your Honor. I am just trying to get—I sometimes do not understand the language this witness [891] uses in response to some of the questions.

The Court: Well, the long and short of his testimony on cross and cross and cross, and now the fourth cross, is that he got 1,919 tons of wire, and no more, and no more was made available to him.

Mr. Laven: I haven't heard that testimony, your Honor, that it wasn't made available to him. That is exactly what I want to know.

(Testimony of J. B. Londono.)

The Court: If that isn't the sum and substance of six days of testimony by this witness, I don't know what it is.

Mr. Laven: I think by asking one question I can clear that up.

The Court: All right.

Q. (By Mr. Laven): Mr. Londono, you mentioned that Dulien got the rest of the wire; is that correct? A. Yes.

Q. That was sent on the White Squall?

A. Yes.

Q. Now, do you know how much wire Dulien got? A. No.

Q. Do you know whether it was more or less than 81 tons? A. No.

Q. Well, Dulien did get some of the wire that was [892] shipped on the White Squall?

A. Yes.

The Court: He just answered that.

Q. (By Mr. Laven): And that was over and above the 1,919 tons which you received delivery of?

A. Yes.

Q. Mr. Londono, when you saw the wire being unloaded off the White Squall, did you see any tags or tickets on it, that is, on the individual coils?

A. Not that I remember. [893]

\* \* \*

Q. (By Mr. Laven): Mr. Londono, do you know on what date that the demurrage charges commenced to run on the wire that was on the dock



(Testimony of J. B. Londono.)

in Long Beach?           A. No.

Q. Does not the date of August 21st refresh your recollection that that is the date that demurrage was charged for the balance of the wire that remained on the dock at that time?

A. (Through interpreter): That doesn't bring me any recollection.

Q. Did you pay any demurrage for wire that was on the dock at Long Beach?           A. I think so.

Q. Do you have those records, Mr. Londono?

A. Yes.

Q. Could you produce those tomorrow morning?

A. I know Mr. Sweeney from Mattoon & Company has the records, and he will produce, of course.

Q. Mr. Londono, directing your attention to the [894] conversation with Mr. Grinstein on, I believe, August 5, 1946, did you have any discussion with him relative to renegotiating the price of the galvanized wire?

Mr. Bunn: You mean as distinguished from the black wire?

Mr. Laven: Yes.

The Witness: Not in particular (through interpreter). Not in particular. What we talked was about, as between—the talk was regarding good wire and bad wire; was not made any separation between the galvanized and the black wire, but the letter from Mr. Grinstein is regarding black [895] wire.

(Testimony of J. B. Londono.)

April 28, 1950

Cross-Examination

(Continued)

By Mr. Laven:

Q. Mr. Londono, when was it that you first noticed the areas in which the wire was on the dock that was marked with chalk "Dulien" and another area marked "Gonzalez & Blanco" (interpreted)?

A. The first time I noticed, I don't remember. The first time I am sure I saw the chalk mark, it was on August the 5th.

Q. Now, were you down at the dock to that area where these two piles were, when you saw the chalk marks prior to August 5th (interpreted)?

A. (Through interpreter): I was on the pier before August the 5th, but I don't remember having seen the chalk marks, and probably was not around that area.

Q. Now, on August 5th, when you say that you first noticed the chalk marks and the two different piles of wire, did you observe whether or not there was any difference in the appearance of the rolls in the area marked "Dulien" and [899] in the area marked "Gonzalez & Blanco"?

A. General appearance, both piles?

Q. Yes.

A. (Through interpreter): The general appearance of both piles was similar, including the

(Testimony of J. B. Londono.)

small portions piled around the warehouse—(in English) the dock, around the dock—(through interpreter) around the dock.

Q. When you say “similar” will you kindly explain what you mean? By “similar” do you mean appearance?

A. (Through interpreter): It was not a difference perceptible to the naked eye. (In English): With the assertion that on the piles marked “Gonzales & Blanco” I saw more quantities of small coils, 28-pound coils.

Q. But was the quality of the wire in both piles the same in appearance? A. Looked the same.

Q. Now, will you tell us how they looked?

A. (Through interpreter): The same appearance I have described many times, of galvanized wire, black wire, rusty wire, and so forth.

\* \* \*

Q. (By Mr. Laven): Mr. Londono, was there any difference in the appearance of the quality of the wire in the piles or in the area marked “Gonzales & Blanco,” and in the area marked “Dulien Steel”?

A. (Through Interpreter): Not to my knowledge; not to my observation.

Mr. Bunn: Will you make your own correction there, Mr. Laven, of “Gonzales” to “Londono,” so that I don’t have to do it later in the record? You said “Mr. Gonzales” instead of “Mr. Londono.”



(Testimony of J. B. Londono.)

Mr. Laven: I mean "Mr. Londono." [901]

\* \* \*

Q. (By Mr. Laven): Mr. Londono, did you ever examine any of the wire at any time on the dock physically with your hands?

A. (Through Interpreter): Many times that I went to the dock with people, I have observed the wire and I was able to break it with my hands, and it was sort of a joke then, and a lot of people that I took there also broke the wire with their hands. [902]

\* \* \*

How many rolls did you examine on August 5th? Do you know?

The Witness: I don't know, your Honor.

The Court: Several?

The Witness: Several. [903]

Q. (By Mr. Laven): How many rolls did you examine the next time, Mr. Londono?

A. I cannot determine what day I examined and broke a piece of wire. I did it several times, and that is my recollection.

Q. On each of the times that you went down to examine this wire you had a prospective buyer with you?

A. No. I went to the pier 80 or 90 times and I did not have 80 or 90 prospects.

Q. I was referring to the times when you had prospective buyers with you. Did you show them how you could break this wire with your hands?

(Testimony of J. B. Londono.)

A. Sometimes yes, sometimes the prospect——

The Court: The prospect showed you?

The Witness: Yes.

Mr. Laven: May I have the bill of lading, please?

(The document referred to was passed to counsel.)

The Court: Are the bills of lading in evidence of his transshipment?

Mr. Bunn: Not yet, sir.

Mr. Diether: Those were all shipped to South America so they wouldn't be available, the originals. The copies might be.

The Court: Well, copies. [904]

Q. (By Mr. Laven): Mr. Londono, I show you Exhibit C-N, and ask you if in any of your conversations with Mr. Grinstein or Mr. Stanley or Mr. Dulien that you were informed as to the contents of the bill of lading, LA-29, which is Exhibit C-N? A. No.

Q. Did they in any of the conversations with you tell you whether or not the wire was being shipped by Dulien Steel Products, Inc., of California as the shipper to themselves as consignee?

A. No.

Q. Did they tell you how many rolls of wire were being shipped under the bill of lading, LA-29, Exhibit C-N? A. No.

Q. Did they tell you how many tons of wire were being shipped under LA bill of lading 29, Exhibit C-N? A. No.

(Testimony of J. B. Londono.)

Q. Then the first time that you had any knowledge of the contents of Exhibit C-N was when you saw it in Mr. Aldwell's office about a week [595] ago?

\* \* \*

A. The first time I saw this original bill of lading, it was in Mr. Bunn's office in the presence of Mr. Morrow and the other gentlemen.

The Court: Mr. Aldwell?

The Witness: Mr. Aldwell.

Q. (By Mr. Laven): Was that the first time that you first learned of the contents of the original bill of lading? A. Yes.

The Court: That is two weeks ago now. It was week ago when we started.

Mr. John Morrow: Three weeks, your [906] Honor.

\* \* \*

The Court: Do you know where C-N was issued?

The Witness: No, your Honor.

The Court: Is that not what you want to know?

Mr. Laven: Yes. [908]

\* \* \*

Mr. Bunn: Either at this time or later there should be called to the Court's attention some errors in the transcript.

\* \* \*

The Court: I suggest that it be done by a motion to correct the transcript, and where there is no dispute, it can be settled quickly, and where there is, the witness can be asked the question as to what



(Testimony of J. B. Londono.)

the testimony was intended to be, without going through the transcript and asking each question over again.

Mr. Hubert Morrow: So far as corrections of his own [914] testimony, it ought to be brought out while he is on the stand now.

Mr. Bunn: That is true.

The Court: I think he can be put back on the stand for that purpose. I don't think it need be done while he is still under cross-examination or before he is released, because obviously this is a situation that is somewhat different than the ordinary situation. It is difficult—while he does very well with his English, it is still difficult sometimes to understand precisely what he intends to say.

\* \* \*

### J. B. LONDONO

called as a witness in his own behalf, testified as follows: [915]

#### Redirect Examination

By Mr. Bunn:

Q. Mr. Londono, I shall jump from one subject to another, so you will have to jump, too.

The Court: Over barbed wire?

Mr. Bunn: Yes, sir.

Q. You have been asked several questions about the markings, the chalk markings on the pier, and those questions, as I remember them, have all been tied in to language referring to two piles of wire.

(Testimony of J. B. Londono.)

Is it your testimony that on the day you first remember seeing the markings——

The Court: August 5th, he has testified.

Q. (By Mr. Bunn): ——on August 5th, all the wire that you observed on the dock was in two separate and distinct piles?

A. Two big piles, and many other small piles.

The Court: If I understand your testimony, it was then in the process of being unloaded?

The Witness: Yes, your Honor.

The Court: So there were 55,000 rolls of barbed wire, so I suppose there were a few scattered around there.

The Witness: Yes, your Honor. [916]

\* \* \*

Q. (By Mr. Bunn): Did you have any of the wire at any time actually weighed? A. No.

The Court: That is prior to its removal—the removal of the first wire.

Mr. Bunn: Yes, prior to the removal of any quantity. [917]

Mr. Diether: Is that removal——

Mr. Bunn: From the dock.

Mr. Diether: ——by Mr. Londono?

Q. (By Mr. Bunn): The question is: Did he have any of it weighed prior to its removal from the dock? A. No.

Q. I mean he himself. I don't mean Mattoon & Company or Koppel & Company. Did Mr. Londono have any of it weighed? A. No.

(Testimony of J. B. Londono.)

Q. In other words, are you able to tell us now the actual weight in tons or pounds——

A. No.

Q. ——of any of the wire except from the records that have been supplied to you? A. No.

Q. You have spoken of a shortage of 81 tons of wire. Does the shortage you refer to include or not the 4.9 tons which you have said was lost account of? A. No.

The Court: So the total shortage is 85.9 tons?

Mr. Bunn: Yes, your Honor.

Q. (By Mr. Bunn): Is that correct, Mr. Londono? A. Yes.

The Court: I have understood that, too.

Mr. Bunn: I did, too, but I want, shall I say the [918] Circuit Court to understand it.

The Court: All right.

Q. (By Mr. Bunn): Mr. Londono, three years and nine months and 16 days ago, on July 12, 1946, when you were given the samples, the cuttings of wire in Dulien's office, which are Plaintiff's Exhibit 36, et cetera, here, did you then observe any rust or brownish tinge——

The Court: Or discoloration.

Q. (By Mr. Bunn): ——or discoloration on any of those cuttings? A. No.

Q. What was the physical condition of those cuttings at that time in regard to grease?

A. (Through Interpreter): It showed fresh grease then. I don't think I used the right word. (In English): Wet.



(Testimony of J. B. Londono.)

The Court: Wet?

The Witness: Wet.

Q. (By Mr. Laven): Did you get any grease on your hands then in examining them?

A. Yes.

\* \* \*

Q. (By Mr. Bunn): In what manner did you actually handle those cuttings in your examination of them at Dulien's office on the 12th of July (interpreted). [919]

A. (Through Interpreter): I took them in my hands, I handled, I looked at them carefully and put them in a piece of paper. [920]

Q. Have you at any time since July 12, 1946, made any effort to change the condition or the appearance of any one of those cuttings?

A. No.

Q. Have you caused them to be brought into Court here as nearly as possible in the exact condition in which they were then on July 12 except for the effects of time and atmosphere?

\* \* \*

The Witness (Through Interpreter): Yes, and I haven't done anything that would have changed them. [921]

Q. (By Mr. Bunn): Have you, upon the occasion of any one of those examinations of those cuttings, to which you have testified, seen any matter drop off of any one of those cuttings?

\* \* \*

(Testimony of J. B. Londono.)

The Court: The question is whether or not he saw it.

Mr. Bunn: Yes.

The Court: When he had it in his possession. Of course I do not suppose he could see it when it was locked up in Mr. Bunn's safe.

\* \* \*

The Witness (Through Interpreter): The grease that was fresh adhered to the paper, of course.

The Court: I think counsel meant solid matter, did you not?

Mr. Bunn: As distinguished from droppings of grease, [922] does your Honor mean?

The Court: Yes.

Mr. Bunn: Yes.

The Court: Where is that one with the hair on it, it looks like?

(The exhibit referred to was passed to the Court.)

The Court: This is number what?

The Clerk: 36-1.

The Court: There is some solid matter as distinguished from grease on there.

Do you see that lump?

The Witness: Yes, your Honor.

The Court: Now your question is whether or not at the time he examined it he saw any solid matter similar to that or other solid matter drop off?

Mr. Bunn: Yes, drop off.

(Testimony of J. B. Londono.)

The Witness: No.

Q. (By Mr. Bunn): Mr. Londono, is there any difference apparent to you—withdraw that.

What difference, if any, appears to you in your examination of those cuttings in this courtroom yesterday and today from their appearance when given to you on July 12th?

A. (Through Interpreter): At the time the samples were given to me they had, of course, wet grease, fresh grease, on [923] them and I didn't observe any discoloration or any spots, rusty spots, but similar to the one that I noticed yesterday in this Court when examined meticulously.

Mr. Bunn: Will you read that answer?

The Court: He said "but similar"?

The Interpreter: Yes.

\* \* \*

Q. (By Mr. Bunn): Now you were asked how many tons of wire you yourself caused to be pickled. Did you yourself cause any of it to be pickled?

A. No.

Q. Did anybody?

A. I sold Gonzalez & Blanco 25 tons for supposed to be pickled.

Q. Who was to have it pickled?

A. Mr. Gonzalez.

Q. At whose expense? [924]

A. Yes.

Q. At whose expense?

A. (Through Interpreter): Mr. Gonzalez's.

\* \* \*



(Testimony of J. B. Londono.)

You have been in the importing business how long?      A. From 1942.

Q. Do you know in whose actual possession primarily cargo on a dock is——

\* \* \*

Q. ——when it is on such dock?

\* \* \*

The Court: Is that not a matter of which this Court can [925] take judicial notice? It is down there on the dock and they want to charge him demurrage so if it is his how are they going to charge him demurrage?

Mr. Bunn: I think your Honor's question has satisfied me.

The Court: It seems to me it is a course of business that is well known. The shipment is there and it is there in somebody's custody until it is taken from them.

\* \* \*

Q. Mr. Londono, do you know of any market which existed in Southern California at any price for that portion of the wire which was last, in the spring of 1947, shipped by you to South America from the Moore-McCormack dock?

Mr. Diether: I object to that as improper re-direct examination. [926]

The Court: Overruled.

Mr. Diether: May I be heard on that, your Honor, before he answers?

This particular wire was wire which was shown

(Testimony of J. B. Londono.)

by one of the letters which I offered for identification yesterday, as being on the dock as a result of separation from a shipment which went on the West Wind, which was in the middle of August 1946. This shipment was made in April. I think the boat actually left the dock in May of 1947. Here it remained on the dock all that time.

I wish to further object to the question on the ground it is indefinite as to what time this witness is speaking about that there was a market, when it was first separated from the shipment that was made from the West Wind in August of 1946 or after it laid on the dock for seven months in May of 1947.

Mr. Bunn: My question is clear.

Mr. John Morrow: We also add the additional objection that the word "market" is too indefinite to mean anything.

Mr. Dasteel: We object also on both grounds.

The Court: Let me hear the question.

Mr. Laven: I join in the objection.

Mr. Diether: May I join in all objections of other counsel. And it is also outside the scope of anything that was brought out by any counsel on cross-examination. [927]

The Court: The only ground I am considering is whether or not the question is indefinite. The other grounds are overruled.

Let me hear the question.

(The question referred to was read by the reporter as follows: "Q. Mr. Londono, do you

(Testimony of J. B. Londono.)

know of any market which exists in Southern California at any price for that portion of the wire which was last, in the spring of 1947, shipped by you to South America from the Moore-McCormack dock?"')

Mr. Bunn: At that time.

The Court: At what time?

Mr. Bunn: When he shipped it in the spring of 1947.

The Court: Very well.

Mr. Diether: If your Honor please—pardon me.

Mr. Dasteel: That question is so inconsistent. He asked about a market in Los Angeles for wire that was shipped to Colombia, and he doesn't say what he means by "market," market price, market value, or what. It is so indefinite and uncertain that I object to it on those grounds.

Mr. Bunn: Market value. I will add that to the question.

Mr. Diether: I further object upon the ground that at that particular time when it was shipped it is incompetent, [928] irrelevant and immaterial, upon the ground that the only time that the market would be material would be at the time it was first available to him, namely, when it was separated out.

The Court: Suppose he was under duty to mitigate his damages as much as possible. The objection is overruled.

Do you understand the question now?

The Witness: Yes, your Honor.



(Testimony of J. B. Londono.)

The Court: Very well.

The Witness: This shipment of—

The Court: No. Do you know whether or not there was any market for it?

The Witness: The only market I knew, the only market value, was for Gonzalez & Blanco, which the same day agreed to pay me no more than \$4.50 per ton of very similar wire.

Mr. Dasteel: I move that the answer be stricken on the ground that it is hearsay. He is quoting Gonzalez & Blanco.

Mr. Diether: And not responsive to the question.

The Court: Motion denied.

Q. (By Mr. Bunn): Mr. Londono, you testified the other day about a requirement, I believe, of the Republic of Colombia—on cross-examination—about the shipping of merchandise into Colombia from outside. A. Yes.

Q. What was in 1946 the requirement of you, as an [929] importer, by the Republic of Colombia, if any, in relation to the taking of money out of Colombia for the purchase of merchandise in the United States of America?

The Court: To be imported into Colombia?

Mr. Bunn: Yes, to be shipped back into Colombia.

\* \* \*

Mr. Bunn: The materiality of it is that I want to know what the relationship between any price that he may actually have received for the wire in

(Testimony of J. B. Londono.)

Colombia and the amounts shown on any export declaration from here to Colombia. [930]

\* \* \*

Mr. Bunn: What I propose to show is that when a Colombian importer causes money to go out of Colombia into the United States of America——

The Witness: Or any other country in the world.

The Court: Just a moment.

Mr. Bunn: ——for the purpose of merchandise in the United States to be shipped from the United States to Colombia, that on the shipment of that merchandise into Colombia there must appear on the documents required by the government the amount of money which went out of Colombia for the purchase of the merchandise.

The Court: How is that material?

Mr. Bunn: In other words, I propose to show that the Republic of Colombia is not willing for a Colombian importer to take out \$160,000 for the purchase of rotten onions and send back rotten onions there without showing what he paid [931] for it.

\* \* \*

The Court: What has that to do with the damages which you claim?

Mr Bunn: It has nothing to do with the damages whatsoever, but I want to forestall the continuation, as was started yesterday on the cross-examination, of an effort on the part of the opponents to show that Mr. Londono reported to the Colombian gov-

(Testimony of J. B. Londono.)

ernment on the shipping documents for the merchandise to go back into Colombia a larger sum of money than Mr. Echavarria paid him for the [932] wire.

The Court: You mean on his export declaration?

Mr. Bunn: Yes, sir.

The Court: His United States export declarations?

Mr. Bunn: Yes, sir.

\* \* \*

The Court: I still don't see how it is material. All that would do would be to go to the weight of his testimony.

Mr. Bunn: With the conversation here I have accomplished my purpose. I have brought to counsel's attention and to the attention of the Court what I propose to prove by this witness, so that there can be no misunderstanding from now on on that thing.

The Court: All right. Ask your question over again, now.

Q. (By Mr. Bunn): Mr. Londono, what is the requirement, if any, which the Colombian Government makes of you as an importer as to the showing or not showing on documents accompanying merchandise into Colombia from this country as to how much money has been spent in the United States for that merchandise? [933]

\* \* \*



(Testimony of J. B. Londono.)

The Court: How much was spent in Colombia, or how much was spent in the United States?

The long and short of it is you want to know whether or not he is required to put in the amount of money he spent for merchandise on documents, to the Republic of Colombia, when it is shipped back there.

Mr. Bunn: Yes, sir, that is what I want.

\* \* \*

Mr. John Morrow: At least, it should be limited to what was required in this particular instance.

The Court: Yes.

Mr. Bunn: Yes, I will limit it.

\* \* \*

Mr. Dasteel: Just a moment. May all the previous statements of counsel be stricken from the record?

The Court: The last question has been withdrawn. The previous statements of counsel may not be stricken. They are [934] just explanatory of what he is trying to get at. [935]

\* \* \*

The Court: C-T, for identification, export declaration on the 2825 rolls.

(The document referred to was marked Defendants' Exhibit C-T, for identification.) [937]

\* \* \*

The Court: What do you propose to ask the witness about this export declaration? Column 7

(Testimony of J. B. Londono.)

has a place for the number, amount, net commodity number, "G" for General License.

Mr. Bunn: Since he has been asked about this document by Mr. Diether, I want him to explain or I want at least to read into the record the printed heading of the column at the extreme right over the dollar figure there.

\* \* \*

Mr. Diether: The only materiality it would have would be to show on July 31st that his agent had this export declaration prepared for shipment of wire to Colombia. In other words, it shows the intention to immediately take [938] possession of that quantity of wire and ship it to South America.

Mr. Bunn: And that is all you wanted it mentioned for yesterday?

Mr. Diether: That is all, and the date that is mentioned on it.

Mr. Bunn: Then that is all I care to pursue the matter, on that statement of counsel.

\* \* \*

The Court: It is admitted.

Mr. Diether: I offer it for the purpose stated. May it be received for the purposes for which I stated?

Mr. Bunn: Well, it is received or not, isn't it?

The Court: It is received in evidence for all purposes, if any. [939]

(The document, heretofore marked Defendants' Exhibit C-T, for identification, was received in evidence.)

(Testimony of J. B. Londono.)

Mr. Bunn: Now, may I see it, please. Now that it is in evidence, may the record show that under the column numbered 7 at the extreme right appears the following printed language, and I want it read in here.

Mr. Dasteel: You might as well put the date in, too, Mr. Bunn.

Mr. Bunn: It is very short. The date is July 31, 1946, but that is typewritten. The following printed language——

The Court: In column 7. You haven't identified that yet.

Mr. Bunn: Sorry. I said it first. Under column 7 at the extreme right:

“Value at time and place of export (selling price, or cost if not sold, including inland freight, insurance and other charges to place of export).”

And under that the figure, “\$13,582.00.” [940]

\* \* \*



JAMES E. SWEENEY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

\* \* \*

Direct Examination

By Mr. Bunn:

Q. Mr. Sweeney——

Mr. Laven: Just a moment, counsel, before we proceed. We haven't any understanding as to a further daily copy, and I think we should decide that before the reporter goes ahead.

Mr. Diether: We decided that there would be no more daily.

The Court: There is to be no further daily?

Mr. Bunn: That is my understanding.

The Court: Unless you change your minds.

Very well.

Q. (By Mr. Bunn): Mr. Sweeney, first I must admonish you that you will have to make an extra effort to be heard in this room, as though I were standing back in that corner and you were talking primarily to me. You will have to be conscious of it [947] all the time or your voice will fall into the depths.

What is your business now, sir?

A. Foreign freight forwarding.

Q. Mr. Morrow says he can't hear you.

A. Foreign freight forwarding.

Q. Where is your office?

A. 124 West Fourth Street.

(Testimony of James E. Sweeney.)

Q. In Los Angeles? A. Los Angeles.

Q. What was your business in the year 1946?

A. The same. I was manager of the same type of business, and the company was Mattoon & Company.

Q. And now you are in business for yourself, or for somebody else?

A. It is my own business now.

The Court: How long were you with Mattoon & Company? Were you with Mattoon & Company up until—what was the last transaction here?

The Witness: I was with them for five years and left them in April of 1947.

Q. (By Mr. Bunn): Permanently?

A. Permanently.

Q. When did you first become acquainted with the plaintiff, J. B. Londono? [948]

A. Early in 1946, when he had the barbed wire transaction that was supplied from Fontana.

Mr. Diether: From Montana?

The Witness: Fontana.

Q. (By Mr. Bunn): Did you have any contact with Mr. Londono in connection with barbed wire shipped by Dulien to Los Angeles County?

Mr. Diether: When?

Mr. Bunn: Did he have any?

The Witness: The first contact I had with Mr. Londono in that was when he advised of—

Mr. Diether: Just a moment. I object to the witness volunteering. He isn't answering the question.

(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): When did you have contact with Mr. Londono in connection with barbed wire shipped by Dulien to Los Angeles County?

A. Yes.

Q. When did you first have such contact?

A. Sometime in July, 1946. [949]

\* \* \*

The Court: There was only one Mr. Sweeney with Mattoon & Company during the time that you were there?

The Witness: Yes.

The Court: And that was you?

The Witness: Yes.

Q. (By Mr. Bunn): What was your position in the office of Mattoon & Company?

\* \* \*

The Witness: I was manager.

Q. (By Mr. Bunn): Does Mattoon & Company have more than one office? A. Yes.

Q. How many offices do they have? [950]

A. Three.

Q. Where?

A. Los Angeles, New Orleans and San Francisco.

Q. You were manager of what office, if any one only? A. Los Angeles. [951]

\* \* \*

Q. (By Mr. Bunn): Did you have any conversation with Mr. Londono prior to July 29th about what we call the Dulien wire? A. Yes.



(Testimony of James E. Sweeney.)

Q. When did that conversation take place?

A. I don't remember the day.

Q. Do you remember approximately how long before July 29th it was?

A. It was approximately two weeks.

Q. Was there anybody else present at that conversation?

A. None that I remember.

Q. What was said?

The Court: Where was it?

Q. (By Mr. Bunn): Where did it take place?

A. At Mattoon's office.

Q. What was said?

A. It concerned mostly the tentative plans of shipping. In other words, what port in Colombia the freight was going [952] to and how much and just the ordinary details of the shipping.

The Court: What was said, in substance?

Q. (By Mr. Bunn): What did Mr. Londono say?

A. Well, so much of the tonnage of the 2000 tons was to go to Cartagena, Colombia, and so much was to go to Buenaventura, Colombia, and so far as the final details of documents, etc., we didn't discuss that because we didn't know the exact consignees, etc. [953]

\* \* \*

The Court: Do you remember the precise number of tons mentioned in that conversation?

The Witness: No.

Q. (By Mr. Bunn): Were you given any specific tonnage instructions in that first conversation?

(Testimony of James E. Sweeney.)

A. No, other than a larger portion was to go to Buenaventura than to Cartagena.

Q. Did you have a conversation with Mr. Londono on Friday, July 26, 1946, that you remember?

A. I am sure I did, and it had mostly to do with going to the dock. [954]

\* \* \*

Q. Where was it? A. In Mattoon's office.

Q. (By Mr. Bunn): Do you remember what was said?

The Court: In substance.

The Witness: In substance, it was a matter of finding out—— [955]

Q. (By Mr. Bunn): You have to say, "somebody said" or we will have two more pages of objections here.

The Witness: We wanted to see the wire or wanted to check the arrival of the ship——

Mr. Diether: Who did?

Q. (By Mr. Bunn): You have to start every sentence with "he said" or "I said."

The Court: If you can remember, in substance

The Witness: Well, let's put it this way: He said that he wanted to check the ship's arrival, and we wanted to see the freight, of course, and we agreed tentatively on a time to go down there, and I also agreed with him to check the arrival so that we could go down at the right time.

The Court: Did anybody mention the name of the ship?

(Testimony of James E. Sweeney.)

The Witness: We knew the name of the ship. The name of it was passed back and forth any number of times.

Q. (By Mr. Bunn): What was the name of the ship?           A. White Squall. [956]

\* \* \*

Q. Do you know whether or not you saw Mr. Londono on July 29, 1946?

A. No, I didn't see him.

Q. You mean you did not see him or you don't remember if you saw him?

A. I don't remember that I saw him.

Q. Did you on July 29, 1946, have any contact with or communication from the Citizens National Trust & Savings Bank regarding what we call the Dulien Wire?           A. Yes.

Q. Where were you?           A. In my office.

Q. What contact did you have or communication received?

A. Well, the bank sent by messenger the release for the merchandise along with a letter of instructions which we had to acknowledge receipt of on the duplicate.

Q. Now do you have—and when I say “do you have” I include your personal possession or Mattoon's files which have been brought into court here, or Mattoon's office——

Mr. Diether: How could this witness possibly say what Mattoon had?

The Court: Did you retain that letter of in-



(Testimony of James E. Sweeney.)

structions with its accompanying document or documents, if any? [957]

The Witness: I did that day.

The Court: Do you continue to retain them?

The Witness: No.

The Court: What happened?

Q. (By Mr. Bunn): What did you do with it or them?

A. They were returned to the bank at their request on the 31st.

Q. How did you happen to return them to the bank? Did anything happen on the 29th which caused you to return them to the bank?

A. No, nothing.

The Court: Do you remember what documents accompanied that letter?

The Witness: Well, just the one release which indicated the freight was paid and we could go to work on the merchandise.

The Court: Was there a bill of lading accompanying that letter? [958]

\* \* \*

The Witness: No.

Mr. Diether: If he knows.

Mr. O'Malley: I think that that qualification should be made.

The Court: He said no.

\* \* \*

The Court: The witness said no, there was no bill of lading accompanying the letter.

(Testimony of James E. Sweeney.)

Mr. O'Malley: If your Honor please, I would like for the [959] record to have that question framed, a preliminary question as to his knowledge.

The Court: He is testifying as to his knowledge.

Mr. O'Malley: I think, your Honor, your further interrogation might indicate that he is testifying to his own present conclusion rather than to his knowledge.

The Court: He is sworn to testify to the truth. I will treat your objection as a motion to strike and deny it.

Mr. O'Malley: Thank you, your Honor.

Q. (By Mr. Bunn): Mr. Sweeney, what was the document which you received on the 29th from the Citizens Bank?

The Court: Accompanying the letter.

Mr. Bunn: Accompanying the letter.

Mr. O'Malley: If he knows.

The Court: If he knows. [960]

\* \* \*

The Witness: It was a freight bill.

The Court: His answer was, it was a freight bill.

\* \* \*

Q. Mr. Sweeney, I show you Plaintiff's Exhibit No. 7, which is entitled "Original Freight Bill," and ask you if you ever saw that document before?

A. (Examining document) Yes.

Q. Is that the document you received on the 29th of July?

The Court: Accompanying the letter?

(Testimony of James E. Sweeney.)

The Witness: Yes.

Q. (By Mr. Bunn): Is there anything now on the face of that document which was not on the face of it when you received it on the [961] 29th, other than the blue penciled No. 7 in the upper right-hand corner and the purple ink notation, "Plaintiff's 1, P. S. Noon," in the center of it?

A. There is no additions that I recall.

Q. What about the telephone numbers apparently on there? A. I don't remember.

Q. Was the stamp "Matson Navigation Company, Paid" on that? A. Yes.

The Court: What date does that say?

The Witness: The 29th.

Q. (By Mr. Bunn): Was the blue pencil initialing in the center of the page stamped on there? A. Yes.

Q. Was the other stamp, which is now on the left-hand side of the document, reading "Payment Received, Check 2529962," on there? A. Yes.

Q. Was there then on the back of that document, the reverse side of which I now show you, any of the writing, the typewriting or pen writing, which now appears on the back of it?

A. No. [962]

Q. Now you received that on the 29th with a letter from the bank? A. That is right.

Q. How long did you retain that document?

Mr. Diether: After he received it on the 29th?

Mr. Bunn: He couldn't have retained it before he received it.



(Testimony of James E. Sweeney.)

Mr. Diether: That is the time you are speaking about?

Mr. Bunn: Yes.

The Witness: From the 29th I kept it until it was returned to the bank by me on the 31st.

Q. (By Mr. Bunn): When you returned that document to the bank on the 31st what, if anything, did you do with the letter which had accompanied that document?

A. Why, I returned the letter and the freight bill to either Mr. Schroeder or Mr. Powers, I don't recall. Both were there.

Q. Had you, between the time you received the letter and the freight bill on the 29th, and the time you returned them to the bank on the 31st, received any verbal or written communication in addition thereto from the bank?

A. Both Mr. Powers and Mr. Schroeder had called me on it.

Q. Called you on the telephone? [963]

A. On the phone, yes.

The Court: One moment. When you received the letter on the 29th from the bank, was that the only document which accompanied the letter?

The Witness: Yes.

Q. (By Mr. Bunn): Did either of those telephone calls come to you on the 29th, Monday?

A. No. [964]

\* \* \*

Q. Did either of those calls come to you on Tuesday, July 30?            A. Yes.

(Testimony of James E. Sweeney.)

Q. Did both of them come to you that day?

A. My recollection is—it could have been one call—first Mr. Powers and then Mr. Schroeder on the same call.

Q. But you talked to both gentlemen?

A. Yes.

Q. On Tuesday?                      A. Yes.

Q. Had you dealt with the foreign department of the Citizens Bank before that? [965]

A. Yes.

Q. Were you personally acquainted with Mr. Schroeder before that?                      A. Yes.

Q. With Mr. Powers before that?                      A. Yes.

Q. Did you know the voice of each of them?

A. Yes.

Q. Now tell us what was said by you and what was said by each of them successively in those telephone conversations?

\* \* \*

A. The phone call starts with Mr. Powers' request that the document and the letter be returned, and Mr. Schroeder also requested it in order to reissue the instructions to more completely protect the bank's position.

Q. You mean that is what he told you?

A. In substance, yes. [966]

Mr. Diether: By "document" is the witness referring to Plaintiff's Exhibit 7 and the letter accompanying it?

Mr. Bunn: So he said.

(Testimony of James E. Sweeney.)

Q. Did you not?           A. Yes.

Q. Did you in whole or in part or at all comply with that request on Tuesday, July 30?

\* \* \*

The Witness: No. [967]

Q. (By Mr. Bunn): What did you say, if anything, in telephone response to Mr. Schroeder's request?

A. The call came in the afternoon. I was busy, too busy to take care of the matter, and said I would come over first thing in the morning, which I did, the following morning.

The Court: Did you take the documents with you then?

The Witness: Yes.

The Court: That is to say, the letter and the freight bill?

The Witness: The letter and the freight bill.

Q. (By Mr. Bunn): Did you go alone to the bank?           A. No.

Q. Who was with you?           A. Mr. Londono.

Q. About what time was it when you went into the bank?

A. Approximately 10:30 or 11:00 in the morning.

Q. To what location in the bank did you go?

A. To the foreign department.

Q. With whom, if anybody, did you talk?

A. Mr. Schroeder and Mr. Powers.

Q. Both?           A. Yes. [968]

Q. Was Mr. Londono in your presence at the



(Testimony of James E. Sweeney.)

conversation with Mr. Schroeder?

A. Yes.

Q. Was there any other person there within the range of hearing?

A. Well, possibly Mr. Powers. The documents were handed over——

\* \* \*

Q. Who handed the documents to whom in the bank on that occasion?

A. I handed the documents to either Mr. Powers or Mr. Schroeder, I don't remember which.

The Court: Did you say anything when you handed them to them?

The Witness: Just "These are the papers you requested, [969] and here they are."

Q. (By Mr. Bunn): Did the person to whom you then handed the documents, whether Mr. Schroeder or Mr. Powers, make any response that you now remember?

A. Well, nothing other than that they acknowledged that they had them.

\* \* \*

Q. Did he say anything about what he intended to do with the documents, or either of them? [970]

\* \* \*

The Witness: No.

Q. (By Mr. Bunn): Did you see him do anything with either of said documents? A. No.

Q. Did he leave your presence? A. Yes.

The Court: Who?

(Testimony of James E. Sweeney.)

Mr. Bunn: The gentleman to whom he handed the documents.

The Court: Did he leave his presence with the documents? [971]

The Witness: Can I explain it?

The Court: I think he can. Tell us what happened.

The Witness: Obviously Mr. Powers had to take care of the mechanics of it, so he took the documents and went into some other part of the department to do what they wanted to do.

Q. (By Mr. Bunn): Was that letter ever again returned to you? A. No.

Q. Do you know what became of that letter?

A. No.

Q. Was the freight bill ever again returned to you? A. Yes.

Q. When?

A. Later in the note department.

Q. On the same day? A. Yes, same day.

Q. Was anybody present with you when it was returned to you in the note department?

A. Mr. Londono and Mr. Schroeder.

The Court: Have you finished your conversation with Mr. Schroeder and Mr. Powers when you first brought the letter and the document back?

The Witness: Yes, that portion.

The Court: Did they say anything to you, did they say [972] "Just wait here" or "Come back tomorrow" or "Go downstairs"?

The Witness: No. The whole matter was co-

(Testimony of James E. Sweeney.)

incidental with some arrangements Mr. Londono had with the bank, which were no business of mine, but we had to go together after we left to the dock so I stayed until the letters were dictated and written and transmitted and I signed for the return.

\* \* \*

The Court: How long did you stay up in the foreign department?

The Witness: Well, we probably spent a half or three-quarters of an hour there, and probably another hour downstairs in the note department.

The Court: Was there conversation back and forth between you and Powers and Schroeder and Londono?

The Witness: Well, most of the conversation was between Mr. Schroeder and Mr. Londono regarding the financial arrangements on the shipment. [973]

\* \* \*

Q. All right. You said that the freight bill was handed back to you in the note department.

A. That is right.

Q. On the same visit by you to the bank?

A. Yes.

Q. Who handed it to you?

A. Mr. Schroeder.

Q. Did he at the same time hand you anything else?

A. Well, the letter giving the shipping instructions for which I signed.

The Court: Did he hand you any other docu-



(Testimony of James E. Sweeney.)

ments at that time besides the letter and the freight bill?

The Witness: No.

Mr. Bunn: May I have Exhibit No. 20 and the other documents, please?

(The exhibits referred to were passed to counsel.)

Q. (By Mr. Bunn): Mr. Sweeney, was the letter which Mr. Schroeder handed you with the freight bill in the note department on the 31st the same letter which you had received from the bank on the 29th and returned by your hand to the bank on the 31st? A. No.

Q. I show you Defendant Bank's Exhibit [974] D——

Mr. Diether: For identification.

Q. (By Mr. Bunn): ——for identification, it being on the letterhead of the Citizens National Bank and bearing date of July 29, 1946, and ask you to read the letter and tell whether you have ever seen that letter before or not.

A. (Examining exhibit.)

The Court: I think in fairness to the witness you might show him the carbon copy. His testimony was to the effect that he had signed it.

Mr. Bunn: Yes.

Q. I show you at the same time Defendant Bank's Exhibit C-D-1—is that in evidence or for identification—for identification, and you may compare them.

(Testimony of James E. Sweeney.)

A. (Examining exhibit): Yes, I have seen them.

The Court: And your question is whether or not he has ever seen that letter before?

Mr. Bunn: Yes, your Honor.

The Court: And when he first saw it?

Mr. Bunn: Yes.

The Court: When did you first see it?

The Witness: I have seen the letter.

Q. (By Mr. Bunn): When did you first see the original of that letter?

The Court: And the carbon. [975]

Q. (By Mr. Bunn): And the carbon.

A. I don't remember the date.

Q. Did you ever see that original or that carbon on the 29th day of July 1946? A. No.

Q. Did you see either of them on the 30th day of July, 1946? A. No.

The Court: Look at it. Is that your signature on the carbon copy?

The Witness: Yes.

The Court: Is it dated?

The Witness: Yes.

The Court: Does that refresh your recollection as to when you first saw it?

Q. (By Mr. Bunn): Is the receipt dated?

A. No, the receipt is not dated on the receipt that I got.

Q. Do you know how you received that letter, that is, whether by hand or by mail—I will withdraw that question.

(Testimony of James E. Sweeney.)

Do you know the circumstances under which you received the original as distinguished from the carbon?      A. I don't remember. [976]

Q. Do you know where you were when you signed the receipt which is on the carbon?

A. In Mattoon's office.

Q. How do you know that?

A. By the stamp. I wouldn't carry it. It is an office stamp.

Q. And you do not know what date you received it?      A. No, I don't.

Q. Nor what date you put that stamped receipt on it?      A. No.

The Court: Let me see those and see if I have it clear in my mind.

(The exhibits referred to were passed to the Court.)

Mr. Bunn: Can anybody tell me the number of the one which has Mr. Sweeney's pen signature on it?

The Court: I thought that was the one that he had.

Mr. Bunn: That is the original and the copy that the bank had of another letter.

Mr. Diether: Mr. Bunn, I think you should state for the record where you received this original letter, Exhibit C-D.

Mr. Bunn: I will ask him.

Mr. Diether: Just a moment.

Let me state that during the course of the preparation for trial we examined Mattoon & Company's



(Testimony of James E. Sweeney.)

file and this letter of July 29, 1946, was not [977] in it.

During the course of the trial here I asked Mr. Bunn if he knew where that letter was, and he produced it from his file and handed it to me in the courtroom.

Mr. Bunn: And had shown it to you in your office before.

Mr. Diether: I never had seen it before, the original.

Mr. Bunn: It was Mr. O'Malley that checked the documents with me in your office before.

Q. I will ask you, Mr. Sweeney, do you know where this letter, C-D, reposed after it first came into your possession?

The Court: What was the verb?

Mr. Bunn: Reposed.

Mr. Diether: He couldn't tell us because he said he doesn't remember when he received it.

Mr. Bunn: That means he doesn't remember the date he received it. It doesn't mean he doesn't remember receiving it.

Q. Did you receive it?

A. Yes, it was in the Mattoon file along with the transaction.

Q. Until when?

Mr. Diether: Just a moment. I think we should know, your Honor, when he first saw it.

The Court: You asked counsel to find out where the letter came from, and that is what he is doing.

Mr. Diether: Very well.

(Testimony of James E. Sweeney.)

The Witness: What is the question? [978]

The Court: How long was it in Mattoon's file?

The Witness: I don't know.

Q. (By Mr. Bunn): Do you know the occasion of its being withdrawn from Mattoon's file?

A. The occasion was Mr. Londono was checking it over with me and took it.

Q. In what year? A. 1946.

Q. Do you know what Mr. Londono did with it—withdraw that.

Where did you next see it? Did you see it in my office in the meantime? A. I might have.

Q. Do you remember?

A. I can possibly remember. [979]

\* \* \*

### Direct Examination

(Continued)

By Mr. Bunn:

Q. Now, Mr. Sweeney, did you while in the bank on Wednesday, July 31, receive any letter by hand from Mr. Schroeder or Mr. Powers? A. Yes.

Q. I show you Exhibit C-E, which purports to be an original typing, dated July 31 and ask you if you have seen that document before.

A. That is the letter I received then.

Q. From whose hand did you receive it?

A. Mr. Schroeder.

Q. In what part of the bank were you then?

A. In the note department.

Q. Did you at that time, or on the same occa-

(Testimony of James E. Sweeney.)

sion while in the bank, receive a carbon copy of that letter?

A. I was requested to sign the carbon copy as an [908] acknowledgment of receipt of the original.

Q. And did you? A. Yes.

Q. I show you Exhibit C-E-1, purporting to be a carbon copy of a letter dated July 31, 1946, and ask you if you have seen that document before.

A. Yes.

Q. What is that?

A. That is the acknowledgement copy that I signed.

Q. And that is your signature in pen there?

A. Yes.

Q. And that bears what date? A. July 31.

Q. And the receipt form? A. July 31.

Q. And is the date of July 31 in the lower left-hand portion of the document in your handwriting?

A. Yes.

Q. And the signature Mattoon & Company?

A. Yes.

Q. J. E. Sweeney, in your handwriting?

A. Yes.

Q. And what did you then do with that document after you had signed it?

The Court: You mean C-E-1? [981]

Mr. Bunn: C-E-1.

The Witness: I handed it back to Mr. Schroeder.

The Court: Did you keep C-E?

The Witness: Yes.

The Court: Were any other documents handed



(Testimony of James E. Sweeney.)

to you at that time with it?

The Witness: Yes, the freight bill.

The Court: What?

The Witness: The freight bill.

The Court: Anything else?

The Witness: No.

The Court: Was a bill of lading handed to you at that time with that document?

The Witness: No.

The Court: Was a bill of lading ever handed to you by the Citizens National Bank relating to this wire?

The Witness: No.

The Court: Did a bill of lading ever come into your possession relating to this wire?

The Witness: No.

Mr. Bunn: May I see the original bill of lading, please. That is No.—

The Court: C-N.

(The document referred to was passed to counsel.) [982]

Q. (By Mr. Bunn): I show you Exhibit C-N, a bill of lading, and ask you if you have ever before now seen that document.

A. I saw it in your office.

Q. When? A. Two days ago.

Q. Two days ago? A. Yes.

Q. During the course of this trial?

A. Yes.

Q. Who showed it to you? A. You did.

(Testimony of James E. Sweeney.)

Q. Who else was in the office?

A. This gentleman (indicating).

Q. Mr. John Morrow?

A. Mr. Morrow. And this gentleman (indicating).

Q. Mr. Hetherington?

A. Mr. Hetherington, yes.

Q. That was this week? A. Yes.

Mr. Bunn: Now, if your Honor please, I will offer Exhibit C-E in evidence. I don't think it is in evidence yet.

The Court: No, it is marked for identification. C-E will be received in evidence as Plaintiff's Exhibit 38. Would that be the next number, Mr. Clerk? [983]

The Clerk: Yes, your Honor.

The Court: And C-E-1?

Mr. Bunn: And C-E-1, your Honor.

The Court: They will be in evidence as Plaintiff's Exhibits 38 and 38-A.

Q. (By Mr. Bunn): Now, Mr. Sweeney, you now remember receiving——

The Court: Just a moment. The clerk calls my attention to the fact that the carbon copy is already marked 16 for identification. Therefore it can go in without so much confusion if the copy, that is, C-E-1, goes in as 16 and the original as 16-A.

(The documents referred to, previously marked for identification, were received in evidence as Plaintiff's Exhibits Nos. 16 and 16-A.)

(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, when there was handed back to you by Mr. Schroeder at that same meeting in the bank of July 31 the freight bill, as you have just before noon testified did occur, did any conversation ensue between you and Mr. Schroeder or in your presence between Mr. Schroeder and any other person regarding that freight bill? A. Yes.

Q. There did occur a conversation?

A. Yes.

Q. Who was present? [984]

A. He and I and Mr. Londono.

Q. What was said, and begin each sentence with "He said" or "I said."

The Court: When was this again?

Mr. Bunn: At the same time.

The Court: In the note department?

Mr. Bunn: Yes, your Honor.

The Court: Very well.

The Witness: Mr. Schroeder instructed me to go—Mr. Londono and I were going to the harbor and his instructions were to go to Dulien Steel and have the back of the freight bill endorsed, which we did later in the day.

\* \* \*

Q. (By Mr. Bunn): Do you now remember whether or not at that same meeting in the bank you received from Mr. Schroeder any other writings than you have testified to? A. No. [985]

Q. You mean you don't recall or you didn't receive any? A. I didn't receive any.



(Testimony of James E. Sweeney.)

Q. What did you do then?

A. We left the bank again and proceeded to Dulien Steel.

Q. You and Mr. Londono? A. Yes.

Q. Anybody else with you?

A. No—Mr. Rendon in addition.

Q. Did you stop anywhere on the way to Dulien's?

A. Not after we left downtown Los Angeles.

Q. Whom did you meet, if anyone, at Dulien's?

A. Mr. Grinstein and Mr. Stanley.

Q. Was Mr. Dulien himself present?

A. No.

Q. Did you have any conversation then with either of those gentlemen? Answer yes or no.

A. Yes.

Q. With which one?

A. Mr. Grinstein and Mr. Stanley.

Q. Together or separately? A. Together.

Q. Was any other person than you and Mr. Londono, Mr. Rendon and those two gentlemen present? A. No. [986]

Q. Will you tell what conversation then and there ensued, beginning each sentence with "He said" and "I said," please.

A. I presented the freight bill to him and explained that it was necessary that we have the endorsement, which they were willing to do, and did.

Q. What did you observe thereafter being done with or about that paper, being the freight bill?

(Testimony of James E. Sweeney.)

A. Mr. Stanley put it in the typewriter and typed in the endorsement and signed it.

Mr. Dasteel: May I ask the date that this took place?

The Court: July 31, according to the evidence.

Mr. Dasteel: July 31?

The Witness: Yes.

Q. (By Mr. Bunn): Now I call your attention to the red typewriting and a purported signature thereunder on the back of Plaintiff's Exhibit No. 7, and ask you if that is the endorsement that was then and there put on the document.

A. (Examining document): Yes.

Q. Did you see the signature affixed thereto?

A. Yes, I did.

Q. Is that the signature of Mr. L. P. Stanley?

A. Yes.

Q. As you saw it put on the document? [987]

A. Yes.

Mr. Hubert Morrow: For the record, that is Exhibit 17?

The Court: Exhibit 7.

Q. (By Mr. Bunn): Then what was done with the document after Mr. Stanley signed it?

A. It was returned to me.

Q. What did you do with it?

A. I returned to Matson's office with it.

Q. Were you accompanied by Mr. Londono?

A. Mr. Londono, yes.

(Testimony of James E. Sweeney.)

Q. Do you know what thereafter became of that freight bill?

A. It was placed in the file that had to do with the transaction.

Q. In the file at Mattoon's office? A. Yes.

Q. Was that file open or not open to Mr. Londono? A. It was open.

Q. With or without specific permission from anybody in Mattoon's office?

A. He didn't need specific permission.

The Court: Did you go to the dock that day with Mr. Londono?

The Witness: Yes. [988]

The Court: Before you came back to Mattoon?

The Witness: Yes.

The Court: From Dulien?

The Witness: Yes.

Q. (By Mr. Bunn): That trip to the dock from Dulien's, were there in that party just you—who was in that party?

A. Mr. Rendon, Mr. Londono and myself.

Q. Do you remember approximately what time you reached the dock?

A. About 3:00, 3:30 in the afternoon.

Q. What did you observe at the dock?

Mr. Diether: Which dock?

The Court: Which dock now?

The Witness: Pier A, Long Beach.

Q. (By Mr. Bunn): What did you observe at the dock?

A. The discharging of the wire and the first



(Testimony of James E. Sweeney.)

loading of the merchandise that was moving, or the barbed wire that was moving to the Moore-McCormack.

Q. Generally speaking, what quantity of wire did you observe on the dock?

A. There might possibly have been around 500 to 700 tons.

The Court: Was the ship in process of being unloaded? [989]

The Witness: It was discharging.

The Court: It was discharging?

The Witness: Yes.

Q. (By Mr. Bunn): Was there any difference in the appearance of the quantity of piles of wire that you then and there saw, each from the other?

Mr. Dasteel: Just a moment, if your Honor please. I would like to have that question clarified. Does counsel mean, was one pile of wire larger than another, or was he asking about the condition?

The Court: Was there more than one pile?

The Witness: Yes, there were two separations.

The Court: Was one pile bigger than the other?

The Witness: My recollection is that one was.

The Court: Were they identified?

The Witness: Yes.

The Court: How were they identified?

The Witness: By the marks on the dock that were made with chalk, one for Gonzalez & Blanco and one for Dulien Steel.

Q. (By Mr. Bunn): Did you observe any differ-

(Testimony of James E. Sweeney.)

ences in the general appearance of the wire in those two piles? [990]

\* \* \*

The Witness: Not at that time.

Q. (By Mr. Bunn): Did you go to the Moore-McCormack pier that day? A. Yes.

Q. Did both the gentlemen last named accompany you? A. Yes.

Q. Did you see any barbed wire at the Moore-McCormack pier? A. Yes.

Q. What did you observe there?

A. The poor condition.

Q. Regarding barbed wire?

A. The poor condition of the wire.

Q. Where did you see the wire there, that is, in an [991] open space on something, or piled up, or how?

A. It was taken inside the shed and piled up on pallet boards in there and there were some rigs outside waiting to unload.

Q. In other words, there were some rigs outside with wire on them? A. Yes.

Q. What was the general appearance of the wire which you saw there then?

A. None of it was good.

Mr. Diether: Which wire, the outside or inside?

The Witness: Both.

Mr. Diether: I object to the question as being indefinite.

Mr. Bunn: All right. I will take the time to do it over.

(Testimony of James E. Sweeney.)

The Court: Objection overruled.

Mr. Bunn: You may answer.

The Court: He has answered it. He said both of them were in poor condition.

Q. (By Mr. Bunn): Was there any conversation then and there? A. Yes.

Q. Between any of the three of you about the wire?

A. Mr. Londono didn't want to ship it. [992]

Q. Say what was said, please.

A. Mr. Londono did not want to ship it.

The Court: What did he say?

The Witness: He said the condition is too bad to send it to his Colombian buyers.

Mr. Hubert Morrow: Your Honor, may I interrupt? I am sorry. I may have misunderstood the witness' last answer about it being on the Moore-McCormack dock and its appearance. I thought he said it was good. Am I mistaken?

The Witness: I said not good.

The Court: He said not good. He first said it was poor, then he said it was not good. ?

Mr. Hubert Morrow: I beg your Honor's pardon. I didn't catch it. Would you speak a little louder, please?

The Court: What do you mean by "not good"?

Mr. Dasteel: I move that the witness' answer be stricken on the grounds that he is not qualified as an expert and not in a position to make any definite statement as to the condition of wire, good, bad or indifferent.



(Testimony of James E. Sweeney.)

The Court: Motion denied.

What do you mean, not good?

The Witness: Well, I should have stuck to the first word. It was in poor condition.

The Court: What do you mean, poor?

The Witness: Rusted, and some of the galvanized wasn't [993] identifiable as galvanized, some of the black wasn't identifiable as black, and there was mud on some of the rolls and generally poor condition.

Q. (By Mr. Bunn): Did that condition exist to the same extent in the wire you saw on the rigs outside? A. Yes.

Q. And the wire you saw in the shed?

A. Yes.

Q. Did you then and there do anything yourself about any of that wire?

A. Mr. Londono indicated he didn't want it shipped, so I sent the loaded trucks back to Pier A to set it back on the dock.

Q. That is what you refer to as rigs?

A. Yes.

Q. Did they begin moving while you were there?

A. I didn't see them.

Q. Then what did you and Mr. Londono do and Mr. Rendon? A. Returned to Los Angeles.

Q. Where did you go?

A. Back to Mattoon's office.

Q. Did Mr. Londono go with you or not?

A. I don't remember.

Q. Now was anything done by you on August 1st

(Testimony of James E. Sweeney.)

in regard [994] to this barbed wire, I mean any of it now?

A. Well, on August 1st Mr. Londono, having seen the Moore-McCormack portion and what we had seen in Long Beach that was discharged, and we weren't certain at Long Beach just how much of it, despite the segregation on the dock, was going to go to Mr. Londono or what was going to go to Gonzalez & Blanco, so August 1st would be a day of confusion because we wouldn't be able to take any further action as far as shipping to Colombia is concerned.

Mr. Diether: Just a moment.

The Court: The answer is that you did not do anything on August 1st, or do you remember?

The Witness: I remember that on August 1st Mr. Londono decided to segregate.

The Court: Did he instruct you?

The Witness: Yes.

The Court: In conversation with him?

The Witness: Yes, he instructed me.

The Court: In your office?

The Witness: Either at my office or over the phone, I don't remember.

The Court: The previous answer may be stricken.

Mr. Diether: Thank you. [995]

\* \* \*

Q. I show you Plaintiff's Exhibit 23 and ask you if you ever saw that document before, that letter before.

(Testimony of James E. Sweeney.)

A. (Examining document.)

Mr. Dasteel: Is that dated August 1st?

Mr. Bunn: Yes, it is dated August 1st.

The Witness: Yes.

Q. (By Mr. Bunn): Where did you see it?

A. In Mattoon's office.

The Court: What date?

The Witness: I don't remember.

The Court: Was it the date it bears?

The Witness: I assume that it was.

The Court: Were you there when he dictated it and wrote it?

The Witness: Yes.

The Court: He dictated it to your stenographer?

The Witness: Yes.

Q. (By Mr. Bunn): Did you answer in the affirmative or negative? A. Yes. [996]

Q. Now, Mr. Sweeney, did you receive any instructions from the Citizens Bank in regard to any of the wire in question here?

A. The instructions are in that letter that we had here that I received on the 31st. [997]

\* \* \*

The Court: Mr. Sweeney, Mr. Bunn has handed you a file there. A number of documents have been taken from it and marked for identification in this court. Will you look at that file and state generally whether or not it is what you refer to as the file relating to this matter?

The Witness (Examining file): Yes, it is.



(Testimony of James E. Sweeney.)

The Court: You do not know whether it contains all the documents?

The Witness: It contains all the shipping documents.

The Court: Very well. Did it contain all of the documents relating to that matter in the office of Mattoon & Company when you secured it and brought it here with Mr. Bunn?

The Witness: Yes.

Q. (By Mr. Bunn): Do you know whether or not, prior to the bringing of it here by you and me the other day under that stipulation, there has been at any time withdrawn from that file any other documents than the letter which is dated July 29 and was introduced in evidence here this morning and shown to you?

A. That withdrawal and the freight bill. [998]

The Court: Otherwise your testimony is that the file was in the same condition then as it was when you left the employ of Mattoon & Company in 1947?

The Witness: Yes.

Q. (By Mr. Bunn): In the meantime, do you know whether the contents of that file have been made available for personal examination to both Mr. Diether's office and to me? A. Yes.

Q. In the meantime? A. Yes.

Q. Now did you do anything in regard to this wire subsequent to your receipt of the letter of in-

(Testimony of James E. Sweeney.)

structions from the Citizens Bank in addition to what you have already told us?

\* \* \*

The Court: I think that is a conclusion.

Q. (By Mr. Bunn): Did you comply with any instructions of the Citizens [999] Bank?

The Court: That calls for a conclusion.

Mr. Bunn: That is the reason I asked it the other way.

The Court: I think you are justified in suggesting specific occasions.

Q. (By Mr. Bunn): Did you do anything in regard to the directing or supervising of the shipment of any of this wire? A. Yes.

Q. What did you do?

Mr. Diether: Just a moment, your Honor. I object to that question on the ground that there is no proper foundation laid. First we have to get the wire from the dock to some place where he can ship it. I think there should be some testimony first as to the fact that he has taken some steps to have it within a freight dock.

The Court: Maybe that is part of the steps he took to ship it.

The Witness: Yes.

The Court: What did you do in relation to shipping the wire?

The Witness: Followed the instructions issued by the bank, which were to contact Mr. Londono for the actual details but to return the documents,

(Testimony of James E. Sweeney.)

the original documents, to the bank, and that was done. [1000]

The Court: The original shipping documents?

The Witness: Yes, the original shipping documents.

The Court: What do you mean, original shipping documents?

The Witness: Bill of lading, commercial invoice and insurance policy.

Q. (By Mr. Bunn): On the shipments to South America, you mean? A. Yes.

The Court: Did you make shipments of the wire to South America?

The Witness: Yes. [1001]

\* \* \*

The Court: Did you make the export declarations in all your shipments?

The Witness: That is a necessity, yes.

The Court: Did you?

The Witness: Yes.

The Court: And filed it here with the local customs office?

The Witness: Yes. [1002]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, can you readily from that file now state what was the first of the several shipments which you caused to be made of that wire? A. Yes. [1003]

\* \* \*

Q. (By Mr. Bunn): I show you a memorandum



(Testimony of James E. Sweeney.)

here on a Johnson Line heading and ask you if those pencil memoranda are in your handwriting.

A. Yes.

The Court: Have it marked for identification. That will be No. 38?

The Clerk: Yes, your Honor.

(The document referred to was marked Plaintiff's Exhibit No. 38 for identification.)

\* \* \*

Q. By Mr. Bunn): Did you make that up at my request sometime after September 1, 1947, those pencil figures? A. Yes, I am sure I did.

Q. Where did you get the information?

A. Off the bills of lading.

Q. In that file before you? A. Yes. [1004]

Q. Does that memorandum help you now to check the figures in that file of shipments? A. Yes.

Q. Will you check the file now of shipments and tell us what your first shipment was and what ship it was on?

The Court: And the date.

Q. (By Mr. Bunn): And the date of the shipment.

The Court: And quantity. [1005]

\* \* \*

Mr. Bunn: Just a moment, please, sir.

You have handed me several documents.

Q. Was that bill of lading last mentioned issued singly or in a set? [1007]

(Testimony of James E. Sweeney.)

A. Well, the practice is three originals and all the copies that may be required.

Q. What have you just handed me?

A. Copies, and some are signed by the steamship company.

Mr. Bunn: I am taking off from under the clip, if your Honor please, the copies of bills of lading——

Q. Are they all signed? A. Yes.

Q. Does that make them duplicates?

A. Copies signed can be called duplicates; yes.

Q. Is each one stamped copy?

A. Yes, copy, non-negotiable.

The Court: They are carbons of the original?

The Witness: Yes, exactly. [1008]

\* \* \*

The Witness: Well, these were all issued in accordance with the bank's instructions and says Mattoon & Company, shipper, consignee, order of shipper, and the arrival notice—do you want the ultimate consignee?

The Court: If it is on the bill of lading.

The Witness: Yes, Alberto Echavarria.

The Court: In other words, they were shipped by Mattoon & Company to Echavarria on the order of Mattoon & Company?

The witness: Yes. That made the documents negotiable.

Q. (By Mr. Bunn): Did that make them order bills of lading or otherwise?

A. Yes, order; shipper's order.

(Testimony of James E. Sweeney.)

The Court: And both of those were to the same consignee?

The Witness: Yes, they were the same, exactly the same setup.

The Court: And they went to Cartagena?

The Witness: Yes. [1009]

\* \* \*

The Court: Do you have a series of documents there ready for marking?

Mr. Bunn: Yes, sir. [1012]

The Court: Let us have them.

Mr. Bunn: They have already been marked.

The Clerk: The memorandum is marked 38, and then 38-1, 38-2, 38-3, 38-4, 38-5, and 38-6.

The Court: 38 is the memo?

The Clerk: Yes, your Honor.

The Court: And 38-1, 2, 3, 4, 5, and 6 for identification are described as shipping documents?

Mr. Bunn: Yes, your Honor.

(The documents referred to were marked Plaintiff's Exhibits Nos. 38-1, 38-2, 38-3, 38-4, 38-5, and 38-6 for identification.) [1013]

\* \* \*

The Court: I think that all of these can go in generally on the proposition of the movement of the wire, the possession of the wire and the dates and quantities.

I think although they all may go in generally in connection with the plaintiff's theory that the plain-



(Testimony of James E. Sweeney.)

tiff was under an obligation to do everything that he could in mitigation of damages.

\* \* \*

The Court: Counsel, if I remember correctly, either you [1015] or Mr. Dasteel or both of you on cross-examination of Mr. Londono proceeded to ask, and I permitted you to ask, how much money he had received, how much money he had actually received, and one of the unsettled questions of law in this case, among others, is what is the proper measure of damages in the event the plaintiff is entitled to recover. Is it the fair market value in Los Angeles, or the amount that he actually received?

Mr. Diether: Your Honor may be right.

The Court: I think they are admissible generally against all parties on the two grounds that I have stated. Otherwise I think it is subject to various objections. I will permit counsel to examine them and overrule all objections and admit them only for the limited purposes which I stated a moment ago. [1016]

\* \* \*

The Court: In connection with the mitigation of damages, it seems to me that almost everything Mattoon & Company did is admissible in this transaction. There has been testimony that Mattoon & Company hired Koppel, that they hired truckers, that they segregated the wire and the like. Technically everybody is entitled to have Mr. Koppel come up and say, yes, I paid so-and-so. Of course

(Testimony of James E. Sweeney.)

technically you could require the plaintiff here to produce the man who actually did the work and say that he worked so many hours and that he was worth so much money. But it seems to me that all of that material is admissible and material and competent in connection with this case for that purpose. [1018]

Mr. Bunn: That is the only purpose for which we are putting it in.

\* \* \*

Mr. Hubert Morrow: But I think we can save a great deal of time if Mr. Bunn will be permitted to just ask the specific questions he wants as to certain quantity, shipped on a certain date, and let the witness testify from the documents.

Mr. Bunn: I am prepared to do so.

The Court: Very well. [1019]

\* \* \*

The Court: Now you have a set of documents that are marked 38-1 for identification.

The Witness: Yes.

The Court: Of what do those documents consist?

The Witness: The bill of lading and the freight bill covering.

Q. (By Mr. Bunn): Covering a shipment on what ship?      A. Moormacreed.

Q. How many rolls of wire?

A. 4017. [1023]

Q. How many pounds?      A. 225,500.

(Testimony of James E. Sweeney.)

The Court: And the date of the bill of lading?

The Witness: August 15, 1946.

The Court: Hand it over here to the clerk.

Now do the same thing with the next batch, that is, 38-2 for identification.

Q. (By Mr. Bunn): What is the next one, does it represent a shipment on the Westwind?

A. Yes.

Q. How many rolls of wire? A. 4,161.

Q. How many pounds? A. 428,583.

Q. What is the date of the bill of lading?

A. August 15, 1946.

Q. In addition to the bill of lading there is a freight bill attached there for the shipment?

A. Yes.

Q. What is 38-3?

A. Shipment on the Westwind.

Q. How many rolls? A. 3,862.

Q. How many pounds? [1024]

A. 397,786.

Q. What is the date of the bill of lading?

A. August 15, 1946.

Q. What is 38-4—

The Court: On 38-2, there was also a carbon.

The Witness: Of a transmittal, yes.

The Court: A transmittal to the Citizens Bank?

The Witness: That is right. There is also on 38-3 then.

The Court: If you will just state each document what it is.



(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): What is 38-4, what are the documents under No. 38-4?

A. Bill of lading—

Q. For shipment on what ship?

A. The SS Lookout.

Q. How many rolls? A. 9,444.

Q. How many pounds? A. 648,820.

Q. What is the date of the bill of lading?

A. September 3, 1946.

Q. What other documents, if any, are attached to that bill of lading?

A. There is a freight bill listing the freight charges on this shipment and one other shipment on the same ship. [1025]

Q. What is 38-5?

A. It is a shipment on the SS Lookout.

Q. How many rolls? A. 3,628.

Q. How many pounds? A. 351,300.

Q. What is the date of the bill of lading?

A. September 3, 1946.

Q. Are there any other documents thereto attached? A. No.

Q. Is that the other shipment about which you said that the preceding numbered exhibit had the freight bill on? A. Yes.

Q. Have you totaled the number of rolls and the weight of those shipments?

Mr. Diether: Counsel has just handed to the witness a typewritten document which is not numbered and has not been identified.

(Testimony of James E. Sweeney.)

Mr. Bunn: I will withdraw it and hand him the one in his own handwriting.

Q. Have you totaled the number of rolls, sir?

A. Yes.

Q. What is the total number of rolls on those five shipments? A. 25,112. [1026]

Q. What is the total poundage or total weight on those five shipments? A. 2,051,989.

Q. Pounds? A. Pounds.

Q. And how many tons is that approximately?

A. 1,026.

\* \* \*

The Court: Before you get to another subject I want to ask a question.

I want to call your attention to Exhibit 38-1. You stated that there was the freight bill and the bill of lading. The freight bill appears on its face to be dated August 15, 1946, Moormacreed, Moore-McCormack Lines agent to Mattoon & Company. The bill of lading is dated August 15, 1946, and the freight bill is stamped paid August 15, 1946.

Now from the usual course of business are you able to indicate by the date of the payment of the freight bill whether or not the Moormacreed sailed on or about August 15?

The Witness: No.

The Court: In other words, do you pay the freight bills after the freight sails or in the course of business?

The Witness: It could be either way. You could pay them before or after.

The Court: So that the date stamped paid on

(Testimony of James E. Sweeney.)  
each one of [1027] these freight bills—for instance on 38-2, the bill of lading is August 15 and the freight bill is stamped paid August 30—Westwind, that would give no indication as to the date of the sailing of the vessel?

The Witness: Absolutely not.

The Court: Very well.

Mr. Bunn: Now, if your Honor please, the document Mr. Diether is about to object to is a summary of those figures.

The Court: In each one of these did you forward the original bill of lading to the Citizens National Bank together with a consular invoice and the commercial invoice?

The Witness: Yes.

The Court: On or about the date the bill of lading was issued?

The Witness: On or about the day we paid the freight.

The Court: On or about the day you paid the freight bill?

The Witness: Yes.

Mr. Bunn: I thought this document might be helpful to everybody. It is the summary from which these figures have been testified to by the witness, only it has been typed instead of using this little slip of paper.

The Court: Did you prepare it?

Mr. Bunn: I prepared it from this.

Mr. Diether: Let it be marked for identification then. [1028]



(Testimony of James E. Sweeney.)

Mr. Bunn: Will you please mark it?

The Court: That will be 38-7.

(The document referred to was marked Plaintiff's Exhibit No. 38-7 for identification.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, from Mattoon's file does there appear to have been still another shipment of wire on behalf of Mr. Londono? A. Yes.

Q. I ask you what is the group of documents numbered 38-6?

A. It is a shipment on the Clearwater Victory, 477 rolls of barbed wire.

Q. Called bales therein?

A. Yes, they call them bales. Weight, 50,085 pounds.

Q. Does the tonnage appear therein?

A. Well, the pounds, not the tons.

Q. It doesn't appear as tons? A. No.

Q. All right.

A. The date of the bill of lading, April 21, 1947.

Q. What other documents are there to that attached?

A. There is a freight bill attached, Mattoon & Company's invoices.

Mr. Diether: For what? [1029]

The Witness: One for dock storage at Moore-McCormack, and the other for the various charges including the documentation and the insurance and the ocean freight charges; also a copy of the consular invoice and a duplicate, one copy of the insurance policy, copy of the export declaration, and a

(Testimony of James E. Sweeney.)

copy of a transmittal letter to the agent Roldan y Cia., Cartagena. [1030]

\* \* \*

The Court: May I ask one question? In each one of these there is attached a freight bill, each of which is stamped paid. Do you know of your own knowledge whether or not that sum of money was paid for freight as indicated on each one of these bills connected with Exhibits 38-1, 2, 3, 4, 5, and 6, the sum of money therein indicated?

The Witness: Yes.

The Court: Was it?

The Witness: Yes. [1031]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, did you disburse or cause to be disbursed any sums of money in payment of expenses incurred on Mr. Londono's behalf in connection with the wire in question other than ordinary expenses of the respective shipments to South America? Is that clear, is that question clear to you? A. Yes.

Q. What is your answer? A. Yes.

Q. Did you cause to be made up any summary of those special expenses so disbursed or caused to be disbursed by you? A. Yes.

Q. Do you have it before you? A. Yes.

Q. What is it in?

A. In the form of a letter addressed to you.

Q. Addressed to Mr. Londono's attorney, Thomas Bunn? A. Yes.

Q. Are you able—answer yes or no—from that

(Testimony of James E. Sweeney.)

summary to testify item by item whether or not the disbursements therein reported were [1032] made?       A. Yes.

Q. And for what purpose they were made?

A. Yes.

The Court: While counsel are looking at that, I understood you to say that somewhere in each one of these sets of documents there was indicated the number of the export declaration.

The Witness: Yes. It is on the face of the bill of lading.

The Court: On the face of the bill of lading?

The Witness: Yes, in the body (indicating).

The Court: I see. Very well.

Mr. Diether: Better have it marked for identification if you are going to show it to the witness.

The Court: No. 39.

(The document referred to was marked Plaintiff's Exhibit No. 39 for identification.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, will you state the items shown on the summary to which you just testified?

Mr. Diether: I object to that, if the court please.

\* \* \*

Mr. Diether: I object that that is not the best evidence [1033] of the charges, that the summary which the witness has just identified as Plaintiff's Exhibit 39 does not attempt to indicate whether or not the dock charges for any particular period, whether it included dock charges for the wire which



(Testimony of James E. Sweeney.)

Dulien had on the dock at the same time, and there is no indication of the quality of the wire or the period of time——

The Court: Quality?

Mr. Diether: Yes, quality or the periods involved.

There is also included on this summary the taking of the pictures of the wire. I don't think we are responsible for collecting evidence for the plaintiff.

Mr. Bunn: That item is not in the complaint.

Mr. Diether: There is also various items here of Mattoon & Company. It just says "extra expense."

Mr. Bunn: It is one item, not various items.

Mr. Diether: It shows extra expense of Mattoon & Company of a certain amount. I don't think the witness is qualified to express an opinion of the actual expenses from any such summary as that.

Mr. Dasteel: I join in the objection.

Q. (By Mr. Bunn): Mr. Sweeney, are there supporting documents in this file for these charges?

A. Yes.

The Court: Did you make up that summary from your files [1034] and records?

The Witness: I made it up from the supporting records.

The Court: From the supporting records?

The Witness: Yes. [1035]

\* \* \*

The Court: We have argued that before, and we will probably argue that again here. The difficulty

(Testimony of James E. Sweeney.)

in connection with ruling on these various objections is that you have four different defendants here, each of them setting up a different theory of law concerning their lack of responsibility or their measure of it if they do have any. The evidence is admissible against the defendants Dulien and against the defendant Bank under the present status of the case and of the pleadings.

It is doubtful whether it is admissible against the defendant Matson and the defendant United States under the state of the present case. But I will overrule the objections and each side may reserve their right for a motion to strike it in the event it is deemed wise on their part to do so.

Mr. Dasteel: May the record show I join in these objections?

The Court: That the question was incompetent, irrelevant and immaterial?

Mr. Hubert Morrow: We shouldn't have said immaterial, we are only raising the question of immateriality and we are not objecting on the ground that it is not the best evidence.

The Court: I understand. I will overrule your objections, subject to a motion to strike on that ground, and I [1036] will overrule the objections made by the Bank and the defendants Dulien.

Mr. Diether: May I add to my objection?

The Court: Very well.

Mr. Diether: On the further ground it is incompetent, irrelevant and immaterial, not within the contemplation of the parties and any of these

(Testimony of James E. Sweeney.)

expenses could not have been proximately caused by any act of the Bank alleged in the complaint, and it is not the best evidence.

Mr. Dasteel: I make the same objection.

The Court: The objections are overruled.

In connection with the objections of the Bank that this is not the best evidence, I would suggest that the entire file of Mattoon & Company be marked for identification.

Mr. Bunn: I am happy to have it so marked.

The Court: The whole file. That document you had was marked No. 39. The whole file will be marked No. 40.

\* \* \*

The Court: The whole remaining file of Mattoon & Company, excluding the various documents which have already been withdrawn and marked or otherwise identified in the Court [1037] proceedings.

Mr. Bunn: Do you have in hand now the entire file on the Dulien wire transaction except for the documents I have already called attention to that were withdrawn?

The Witness: And this smaller one that has to do with the transmittal to Gonzalez & Blanco.

Mr. Bunn: I think that can go in too.

The Court: Both can go in as No. 40. In other words, they are Mattoon & Company's files.

Mr. Bunn: And that includes these documents he is about to testify to?

The Court: Yes, everything.



(Testimony of James E. Sweeney.)

Mr. Bunn: Now they are marked No. 39, are they?

The Court: No, they are marked No. 40 for identification.

Mr. Laven: What is No. 39?

The Court: No. 39 is the summary which he said he made concerning charges, and I take it you are now about to reframe your question.

Mr. Bunn: Yes, sir, and I am about to lead the witness.

Mr. Diether: May it be understood that my objection goes to all this line of testimony without further objection?

Mr. Dasteel: And mine too.

The Court: Yes.

Mr. Hubert Morrow: And ours also? [1038]

The Court: Everybody's.

(The documents referred to were marked Plaintiff's Exhibit No. 40 for identification.)

Q. (By Mr. Bunn): Mr. Sweeney, when I ask you if you paid, I include also "or caused to be paid."

Did you pay dock storage at Pier A, Long Beach, in the amounts totaling \$2,837.45? A. Yes.

Q. Did you pay a charge of \$39.85 for inspection by Toplis and Harding? A. Yes.

The Court: Are all these figures going to coincide with the figures you have put in your complaint?

(Testimony of James E. Sweeney.)

Mr. Bunn: They are, because that is where I got them from.

The Court: Go ahead then.

Q. (By Mr. Bunn): Did you pay \$48 for segregation, supervision of wire for shipment on the Westwind? A. Yes.

Mr. Bunn: You will notice, gentlemen, I have not asked him any question about the \$25.75 item which is No. 3 there. It is not in the complaint.

Q. Did you pay \$130.50 extra drayage on account of bad [1039] condition of the wire shipped on the SS Westwind? A. Yes.

Q. Did you pay \$605.86——

The Court: To whom did you pay these items?

The Witness: It is in the supporting documents.

The Court: Very well. Go ahead.

Q. (By Mr. Bunn): Did you pay \$605.86 for sorting labor on 446 tons for shipment on the SS Westwind? A. Yes.

Q. Did you pay \$507.38 for sorting labor on the 112.75 ton shipment on the SS Moormacreed?

A. Yes.

Q. Which appears in this summary as 112 tons?

A. Yes.

Q. Did you pay \$1,621.62 for sorting labor in connection with a shipment or shipments on the SS Lookout? A. Yes.

Q. Does that list of disbursements through that point constitute the special expenses which you actually paid out? A. Yes.

Q. Now, Mr. Sweeney——

(Testimony of James E. Sweeney.)

Mr. Diether: Just a moment. May I ask the Court to have this witness at some convenient time pick out from the file of Mattoon & Company, which is marked Exhibit 40, the [1040] supporting data which he claims supports these figures?

Mr. Bunn: They are right here, sir.

The Court: You do have them?

Mr. Bunn: Yes.

Mr. Diether: Have they been extracted from Exhibit 40 or are they a part of it?

The Court: They are a part of the file, Exhibit 40 now.

\* \* \*

The Court: Mr. Witness, Mr. Bunn has a batch of papers in his hand. You have just testified concerning extra expenses. You have gone through file No. 40, have you, and separated the supporting data?

The Witness: Yes.

The Court: You have looked through the papers he now has in his hand?

The Witness: I am not sure that they are all correct because of the condition of the file and the time we had to sort it during the recess.

The Court: So far as you have had time during the recess [1041] you have sorted out of the file and now have there, which you will attach to Exhibit 39 and mark Exhibit 39-A, the supporting documents which you have been able to extract so far. Give it to the clerk and get it marked now.

Mr. Diether: These ought to be numbered consecutively.



(Testimony of James E. Sweeney.)

The Court: We can have it done later when somebody starts to cross-examine him about them.

(The documents referred to were marked Plaintiff's Exhibit No. 39-A for identification.)

Q. (By Mr. Bunn): Mr. Sweeney, in your check of those supporting documents did you find documents supporting in toto every one of those items? A. Yes.

Q. What about the Southern Pacific charges?

A. It is in the file.

Mr. Diether: Are they in the batch of papers which were handed to the court?

The Witness: I said I didn't have a chance to pull them all out.

The Court: Just a moment. I indicated that these would be called Exhibit 39-A as a whole. The clerk will tack these together and then go through and mark each document as 39-A, etc., on through the entire list. [1042]

Q. (By Mr. Bunn): Mr. Sweeney, the last item on the summation from which you were testifying appears to be a charge of \$750 by Mattoon & Company. Will you explain that item?

A. Well, that was set up in the books against Londono for all the extra work involved because of the condition that arose regarding the movement of the wire.

Q. Did you do that work?

A. Yes, mostly myself.

(Testimony of James E. Sweeney.)

Q. Is the figure of \$750 a proper charge for that work?

Mr. Diether: I object to that, if the Court please, on the ground that there is no proper foundation to show the amount of work he did or what he did.

The Court: I think that is pretty much of a shortcut question.

Mr. Bunn: That is right. I can ask him what he did.

The Court: I do not think that there is sufficient foundation.

What is your usual basis of your charge?

The Witness: The usual basis?

The Court: A percentage or time?

The Witness: Time, the size of the transaction, the amount of work involved.

The Court: In other words, it is time and percentage?

The Witness: Yes. [1043]

Q. (By Mr. Bunn): Did you make any trips yourself to the Harbor, Long Beach, Wilmington, San Pedro, in connection with the movement of this wire that you would not have had to make an ordinary shipment where the quality of the merchandise was not in question? A. Yes, many.

Q. Do you have any idea how many trips you made down there?

A. I don't remember now.

Q. Can you approximate it at all?

A. Well, around the time the ship arrived I would estimate six or seven times, which would

(Testimony of James E. Sweeney.)

take at least a half a day, and then in the matter of the dock demurrage it required a personal representation with the Harbor Department in order to get the dock demurrage reduced to where it was within reason so that there wouldn't be any further penalties on it.

Q. By the way, what, if anything, did you accomplish in that matter?

A. The reduction—I don't have the figures here—but I think the reduction was in the neighborhood of about 70 per cent of the original cost.

Q. Can you give us——

The Court: You mean the reduction was 70 per cent or the amount paid was 70 per cent? [1044]

The Witness: It was 70 per cent; yes.

Q. (By Mr. Bunn): In other words, you got what would otherwise have been——

The Court: He got 70 per cent reduction. I understand.

Q. (By Mr. Bunn): Can you give us an approximation of how much money that saved on demurrage? A. About \$3,000.

Q. And in what manner did you accomplish that?

A. By written request and finally a personal visit to the head of the Board of Harbor Commissioners of Long Beach.

Q. Did you make any other trips to the Harbor in connection with this matter, unusual I mean?

A. I went twice. Once I had an appointment that he had to break and the second time I was able to see him.



(Testimony of James E. Sweeney.)

Q. You mean the Harbor board man?

A. Yes.

Q. Did you make any other trips to the Harbor in connection with this barbed wire transaction especially, and when I say "especially" I distinguish from what would be normal in your handling and direction of shipments if there had been no question of the quality of this wire.

A. Well, I made two or three trips with Mr. Londono at his request, once to Matson's office and another time back [1045] down to the dock at Pier A.

Q. Did you perform any other special service besides such trips to the Harbor from or at your office occasioned by the questionable condition of the wire?

A. Well, there is the arrangement for the sorting of the merchandise, which was of great importance, and we had to change—we had labor troubles—we had to have different firms do it, and that took a lot of time to take care of.

Q. Now is the charge of \$750 in your opinion a proper charge for such services?

Mr. Diether: I object to that, if the Court please. There is no foundation laid. And may I examine this witness on voir dire as to his qualifications to express an opinion?

The Court: I do not think so. I do not think there is sufficient foundation yet.

Did you have other charges besides that?

(Testimony of James E. Sweeney.)

The Witness: The fees for handling the shipments.

The Court: Were they paid?

The Witness: Yes.

The Court: How much was that?

The Witness: Well, it varied from the size of the shipment.

The Court: Do you know how much altogether?

The Witness: No, I don't remember.

Mr. Bunn: My question, if your Honor please, went to [1046] special services only.

The Court: I know that, but I want to see how much he got.

The Witness: It is in the invoices in the file here, so much per ton was the handling fee.

The Court: So much per ton?

The Witness: Yes.

The Court: And this is a general overall special charge?

The Witness: Yes.

Mr. Bunn: Do I understand that there is still insufficient foundation?

The Court: No, I think there is sufficient foundation for him to testify. What I had in mind goes more to the weight of his testimony than to its admissibility.

Mr. Diether: We haven't heard yet as to how this charge compares with any charge that he made in connection with the regular service. He says a percentage. We don't know whether it is big or little.

(Testimony of James E. Sweeney.)

The Court: Can you tell by looking at the file how much a ton you charged?

The Witness: Yes.

The Court: Was it the same price for every ton?

The Witness: Oh, yes. There was no variation. We established a price per ton and stuck [1047] to it.

Q. (By Mr. Bunn): That is for everybody?

A. For everyone that we handled the barbed wire for. (Examining file) 50 cents a ton.

The Court: Now that is just 50 cents a ton for the tons you shipped, the 1,000 and whatever it was?

The Witness: That is right.

Mr. Diether: 50 cents per ton?

The Witness: Per ton.

Q. (By Mr. Bunn): Was that the usual normal charge?

A. That was within reason for comparable service any place.

Q. Without regard to any special circumstances?

Mr. Diether: Just a moment. We don't know what services were included within the regular services that he would do in connection with shipments for 50 cents a ton.

Q. (By Mr. Bunn): Were any of those special services as to which you have just testified included in the basis for the ordinary charge?

Mr. Diether: We don't know what he was to do yet under the regular services.

The Court: The objection is overruled. What is the pending question now? I think that it was



(Testimony of James E. Sweeney.)

whether or not [1048] that sum was a reasonable charge.

Mr. Bunn: For the special services rendered.

The Court: For the special services in addition to the charge of 50 cents a ton.

Mr. Bunn: For regular services; yes.

The Court: The objections are overruled. You may answer the question.

The Witness: The answer is yes.

Q. (By Mr. Bunn): And that is on Mattoon's books against Mr. Londono now? A. Yes.

The Court: By the way, in connection with Exhibits 38-1, 2, 3, 4, 5, and 6, in each one of them there is attached a bill of lading. Were those forms filled out by Mattoon & Company or were they filled out by the carrier?

The Witness: By Mattoon & Company with one exception. There was an error in the count and the steamship company didn't have time for us to bring a bill of lading over so they re-prepared the bill of lading themselves.

The Court: Is that the custom in the trade?

The Witness: Yes, it is.

The Court: And is it the custom in the trade for the shipper to indicate on the bill of lading any exceptions?

The Witness: No. [1049]

The Court: When exceptions are indicated on a bill of lading, what is the custom in the trade as to who causes it to be put there?

The Witness: The steamship company.

(Testimony of James E. Sweeney.)

The Court: Well, then, if I understand it correctly, the custom in the trade is that the shipper, that is, a broker such as Mattoon & Company acting for a shipper, prepares a bill of lading and takes it to the steamship company?

The Witness: Yes.

The Court: Then what happens? Do they go and look at the goods?

The Witness: The steamship company receives the freight and by means of what is known as a dock receipt they match it up with the bill of lading and on the dock receipt are noted the exceptions, if any, and the weight and the measurements so that they can assess the freight, and that is transmitted to the bill of lading and proper endorsements are made, whatever they happen to want to put on there.

The Court: So the custom is that the shipper or broker submits the bill of lading, the carrier compares that to what you call the dock receipt?

The Witness: That is right.

The Court: And if there are any exceptions noted on the dock receipt they are translated to the bill of lading?

The Witness: Yes. [1050]

The Court: That is the custom in the trade?

The Witness: That is the mechanics and custom.

The Court: And that was the custom followed in connection with these bills of lading?

The Witness: Yes.

Mr. John Morrow: I take it your Honor's ques-

(Testimony of James E. Sweeney.)

tion went to the custom in Los Angeles, California, where Mr. Sweeney operated, not anywhere else?

The Court: Solely.

Mr. Laven: Your Honor, I wonder if you would ask him relative as to order bills of lading and straight bills of lading. There is a straight bill of lading, your Honor, involved here.

Mr. Bunn: There is one that is a straight bill of lading.

The Court: Yes. What you have testified to as the custom is the custom on the order bills of lading?

The Witness: It is the custom on all ladings.

The Court: On all ladings?

The Witness. Yes.

The Court: Well, on this straight bill of lading there appears to be no exceptions.

Mr. Bunn: Is that the one from Londono to Londono?

The Court: Yes.

The Witness: I saw that. I noticed that. [1051]

The Court: Did your office prepare that?

The Witness: Yes. I would say the steamship company overlooked placing it on there. Why, I don't know.

The Court: In other words, your testimony is that in the ordinary course of business the steamship company would have caused that to be placed on there?

The Witness: Yes.



(Testimony of James E. Sweeney.)

The Court: On a straight bill of lading in this community?

The Witness: Straight or order in any community.

The Court: Well, in this community. That is what we are concerned with now.

The Witness: Yes.

Mr. Diether: The witness mentioned one bill of lading that was rewritten by the steamship company. May we know which one that was?

The Court: Was that the straight bill of lading?

The Witness: No, it is I think the 4817 rolls. There was a miscount.

Q. (By Mr. Bunn): You mean 4017?

A. Yes, I believe so. [1952]

\* \* \*

(The document referred to was passed to the witness.)

The Witness: Yes, this is it.

The Court: That is, Exhibit 38-2 was rewritten by the carrier, Moore-McCormack?

The Witness: Yes.

The Court: 38-6 was prepared by Mattoon & Company?

The Witness: Yes.

\* \* \*

Mr. Bunn: I am about to show the witness a letter from Dulien Steel Products dated July 29, to Mattoon & Company.

(Testimony of James E. Sweeney.)

Mr. Diether: It hasn't been marked yet.

The Court: 41.

(The document referred to was marked Plaintiff's Exhibit No. 41 for identification.)

Mr. Bunn: Do you want to see this one, gentlemen (exhibiting document to counsel)?

Mr. Bunn: The reason that this is not on my list is that it was in Mattoon's subpoenaed file.

The Court: That is a letter from Dulien to Mattoon?

Mr. Bunn: Yes, your Honor.

Q. Mr. Sweeney, had you seen that letter before?

A. Yes.

Mr. Diether: It is dated what date?

Mr. Bunn: July 29, 1946. [1053]

Q. Do you know that it was received in Mattoon's office? A. Yes.

Mr. Diether: On or about the date it is dated?

Q. (By Mr. Bunn): On or about the date it is dated? A. About.

Q. Does that include the next day possibly?

A. Most likely.

The Court: Do you offer this in evidence?

Mr. Bunn: Yes, your Honor.

The Court: Admitted. No. 41 in evidence.

(The document referred to was marked Plaintiff's Exhibit No. 41 and received in evidence.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, what are the title documents on the shipments of wire

(Testimony of James E. Sweeney.)

that Mr. Londono caused to be shipped by you to South America?

Mr. Diether: That calls for a conclusion of the witness.

The Court: I think it calls for a conclusion of the witness. I think that he can testify to what the custom in the trade is. [1054]

\* \* \*

Q. (By Mr. Bunn): What documents, if any, were in the trade accepted as the best evidences of title to the merchandise?

Mr. Diether: That is objected to, if the court please.

The Court: On the shipments to South America.

Q. (By Mr. Bunn): On the Londono shipments to South America?

Mr. Diether: I object to that on the ground it is incompetent, irrelevant and immaterial and it has no bearing on any issues involved in connection with the cause of action against the Bank. And I would like to inquire what the purpose of this testimony is.

Mr. Bunn: The purpose is to show that he gave the evidences of title of that merchandise to the Citizens Bank and not to Mr. Londono because the Citizens Bank had a \$54,000 interest in the beginning and that Mr. Sweeney was under instructions from them to see that their interest was protected. That is the purpose of it.

\* \* \*



(Testimony of James E. Sweeney.)

The Court: The objection is overruled. [1055]

\* \* \*

The Court: Is there not a pledge agreement from Londono to the Bank?

Mr. Diether: Yes, but we did not have physical possession of it and we at that time by that letter of July 31, instructed, pursuant to Mr. Londono's instructions, them to ship the wire. We had released it absolutely on July 31, pursuant to Mr. Londono's instructions.

Mr. Bunn: And to do what with the title papers? Return them to the Bank?

Mr. Diether: The title papers were merely to protect us so that we could get some money to pay on account of our note.

The Court: Objection overruled.

Mr. Bunn: Read him the question, Mr. Wahlberg.

(The question referred to was read by the reporter as follows:

("Q. What documents, if any, were in [1057] the trade accepted as the best evidence of title to merchandise?

("The Court: On the shipments to South America.

("Q. On the Londono shipments to South America.")

(Testimony of James E. Sweeney.)

The Court: When you say "Londono shipments" you mean shipments similar to that——

Mr. Bunn: Yes, that he has been testifying to this afternoon.

\* \* \*

The Witness: Well, the ocean bills of lading and the consular and commerical invoices.

Q. (By Mr. Bunn): And what did you do with those documents, Mr. Sweeney?

A. Transmitted them to the Citizens Bank.

Q. Did you deliver any of them to Mr. Londono direct? A. No.

The Court: Mr. Sweeney, did you at any time take out an insurance policy against the risk of loss while on the dock at Los Angeles with loss payable in favor of the Citizens [1058] Bank to the extent of \$240,000 or any other sum?

The Witness: It is in the file here.

The Court: You did take it out?

The Witness: Yes, definitely.

The Court: You have the document in the file before you?

The Witness: Yes. [1059]

\* \* \*

The following proceedings were had.

\* \* \*

The Clerk: I beg your pardon, your Honor. In our numbers we started with 51 instead of 38 because there was a page skipped. [1062]

\* \* \*

(Testimony of James E. Sweeney.)

The Court: No. 38 will take No. 57. And since 38 was only marked for identification that number will be changed to 57 for identification.

I think perhaps we had all better start over. If each of you has the list Mr. Bunn gave you, plaintiff's list of documents for possible use of exhibits in trial, beginning with No. 36 at the top of the page. Do you all have those (assent)?

Document No. 38, marked there, that is marked for identification by the clerk and it has never been used. It now [1066] becomes document No. 56, for identification.

No. 40, for identification on his list will become 58, for identification.

Exhibits 39 and 39-A, which are in evidence, Mr. Bunn will go through the transcript and find where they are mentioned, and they will take a new number and be corrected in the transcript and assigned Nos. 55 and 55-A.

Is that clear?

Mr. Bunn: It is clear to me. I have it all written down.

The Court: No. 41, which is in evidence, Mr. Bunn will go through the transcript and make that correction to change it from Exhibit 41 to Exhibit 56.

Mr. Diether: That is the number you gave to the one above there.

The Court: No, I did not. I gave it 55 and 55-A.

Mr. Diether: The one before that. I have in my records that it should be 56, that 38 should be 57.



(Testimony of James E. Sweeney.)

The Court: Let us leave it as it is now. We will give another number to 41, which will be 57. Is that clear?

Mr. Hubert Morrow: Pardon me, your Honor. You referred to a transcript that Mr. Bunn is going to correct. Of course we are not having any transcript written up now.

The Court: The only documents in evidence upon which the numbers are being changed, and the reason I did it is [1067] because those documents that are in evidence were put in evidence on Mr. Londono's testimony, therefore, there is a transcript and it is easier to correct the transcript than it is to correct it when there is none. [1068]

\* \* \*

May 2, 1950

### JAMES E. SWEENEY

resumed the stand and testified further as follows:

#### Direct Examination

(Continued)

By Mr. Bunn:

Q. Mr. Sweeney, will you take the folders that have been marked No. 40, and identify voluntarily until you are stopped the several groups into which you have grouped the contents of those folders, and tell us what the respective documents are [1073]

\* \* \*

(Testimony of James E. Sweeney.)

The Witness: The first group covers different invoices of Mattoon & Company against Citizens National Bank covering the release of wire to Gonzalez & Blanco. In other words, Gonzalez & Blanco would pick up on the average a hundred tons, turn over to us or to Mattoon his check for the amount of the one hundred tons, which would be \$5,100 for every 100 tons, and we in turn would invoice the bank and transmit the funds.

The Court: Those are together now as a group?

The Witness: Yes.

The Court: We will mark those Exhibit 40-1.

(The documents referred to were marked Plaintiff's Exhibit No. 40-1 for identification.)

Mr. Bunn: May I ask him right there——

Q. Do the invoices on each one of those lots of 51 tons include anything other than the transmittal letter? That is, does it include a bill to the Bank?

A. Yes. [1074]

\* \* \*

The Court: The first set here on top appears to be an invoice from Mattoon & Company to the Citizens National Bank dated November 10th.

Immediately following that is a letter of transmittal dated November 26, 1946, and immediately following that is what purports to be a carbon copy, and immediately following that is what purports to be a carbon of some form.

Mr. Bunn: A delivery order.

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: Dated November 26, 1946, directed to Transmarine Navigation and delivered to Gonzalez & Blanco. Now that would be one set?

The Witness: Yes.

The Court: And the same would follow through with the rest of them?

The Witness: That is right.

The Court: Very well. [1075]

\* \* \*

Q. (By Mr. Bunn): Yes.

A. Then there are here the balance of the supporting documents covering that—what is the total claim—\$6,540.66?

Q. \$6,540.66, was the figure you gave Friday.

A. And the other portion of these supporting documents that remained here Friday.

The Court: I think that is Exhibit 39. Let me see Exhibit 39.

(The document referred to was passed to the court.)

The Court: Yes, we started out here with 39. No. 39, is a copy of a letter from Mattoon & Company to Mr. Bunn listing additional expenses.

The Witness: Yes.

The Court: Now, you have extracted from Exhibit 40, documents which you call additional supporting documents?

The Witness: That is right.

The Court: These will be then attached to Exhibit 39, and become a part of that exhibit, and you



(Testimony of James E. Sweeney.)

have gotten down to V, 39-V, so I guess we can go on through and use the [1076] alphabet as many times as we need to describe them.

The Clerk: No. 39-W, marked for identification.

(The document referred to was marked Plaintiff's Exhibit No. 39-W for identification.)

The Witness: Then there is a group of additional copies of documents on each of the six shipments here which are all assembled in one group.

The Court: Are there six groups here?

The Witness: Yes, sir.

The Court: That is one group?

The Witness: No, that is all six. There is additional copies of bills of lading and freight bills, and so forth.

The Court: They are separated by a clip?

The Witness: Yes, by a clip. They are in chronological order starting with the Moormacreed, Westwind, etc. [1077]

\* \* \*

Mr. Diether: Those apparently apply to all of the six shipments. I wonder if the witness could separate them into the respective shipments by boats?

The Witness: They are.

The Court: Here is Exhibit 38-1, the documents which you identified the other day, and are marked for identification. That is the Moormacreed invoice from them and the bill of lading.

(Testimony of James E. Sweeney.)

(The documents referred to were passed to the witness.)

The Court: Now, this group of documents which you have now handed to me all relate to the same shipment?

The Witness: Right.

The Court: And are transactions related to it?

The Witness: Yes.

The Court: The first one appears to be a carbon of some filled-in form.

The Witness: That is a delivery order.

The Court: That is a copy of a delivery order?

The Witness: Yes.

The Court: And the next one? [1078]

The Witness: A freight bill.

The Court: A freight bill?

The Witness: Yes. Then consular invoice.

The Court: The next one is a consular invoice?

The Witness: Yes, and that is the invoice of Mattoon to Londono for the transaction.

The Court: And the next?

The Witness: That is submitted to the bank.

The Court: A carbon of a letter of transmittal to the bank of the consular invoice?

The Witness: Yes.

The Court: That was missing on this one?

The Witness: Yes.

The Court: And the next is——

The Witness: A copy of bills of lading, additional copies.

(Testimony of James E. Sweeney.)

The Court: Additional copies of one bill of lading or bills?

The Witness: It is one bill of lading; copies of it.

The Court: Very well. They will be attached to and become a part of Exhibit 38-1 for identification.

(The documents referred to were attached to and made a part of Plaintiff's Exhibit 38-1 for identification.)

The Court: Now let us see 38-2. [1079]

\* \* \*

The Court: Let us have Exhibit 38-4.

\* \* \*

And 38-4 presently consists of an invoice from the Grace Lines for \$9,075, and several copies of the bill of lading.

In addition to that you are now handing me as documents relating to the transaction taken from the Mattoon & Company file, a letter to the Citizens National Bank on the letterhead of Mattoon & Company indicating enclosure of three originals and one copy of the bill of lading, with certified [1082] consular invoice No. 674, and three originals and one copy of bill of lading with certified consular invoice 675, with a stamped payment on the bottom. There were two shipments involved here?

The Witness: That is right.

\* \* \*



(Testimony of James E. Sweeney.)

The Court: This is part of the documents, it all relates to the shipment on the Grace Line?

The Witness: To the two shipments, your Honor.

The Court: To the two shipments on the Grace Line?

The Witness: Yes.

The Court: Part of the documents you are now handing me, which was the letter I have just indicated of October 11, a carbon copy of it, and additional copies of the bills of lading?

The Witness: Yes, except we have one mistake. This doesn't belong because it is 107 and this is 108.

Mr. Diether: I can't hear you.

The Court: He said that this one does not belong there. [1083]

The Witness: It goes with the other set under your hand.

The Court: This is all part of 38-4?

The Witness: Yes, you are right.

The Court: And this is the other copy. In other words, that is the only copy of bill of lading 107 that you have?

The Witness: That belongs with 38-5, your Honor.

The Court: Then these documents you have now handed to me complete the copies in Mattoon's files of things relating to the Grace Line shipments?

The Witness: That is correct.

(Testimony of James E. Sweeney.)

(The documents referred to were attached to and made a part of Plaintiff's Exhibit No. 38-4 for identification.) [1084]

\* \* \*

Q. (By Mr. Bunn): Will you take the first set under 40-1 and explain briefly what each document is and what purpose it serves? [1093]

\* \* \*

The Witness: Well, the procedure, and it is outlined on the top transaction here, we might receive a phone call from Mr. Gonzalez advising that he wanted to pick up a hundred tons and we would then upon receipt of his check, certified check for the amount that he was to pick up, in most instances it was \$5,100, we would issue a delivery order to Transmarine authorizing them to deliver to Gonzalez & Blanco, or their order, 100 tons, or whatever the amount was of the wire.

Upon completion of that we would transmit the check to the Citizens Bank along with our invoice for the service.

The Court: For what service? What service did you render to the bank?

The Witness: In this case we were acting——

Q. (By Mr. Bunn): What does the invoice read in one case?

A. Services handling release of 100 tons of barbed wire account Gonzalez & Blanco.

In other words, we were responsible for the disposition of that wire, responsible to the bank. If

(Testimony of James E. Sweeney.)

we were to release a hundred tons to him without collecting that money, Mattoon [1094] of course would be responsible to the bank for whatever the value of the wire was that was taken off the dock.

The Court: It may be deemed that wherever he says "we were responsible," the witness shall have added "we considered ourselves responsible."

\* \* \*

The Court: When you say you were responsible, you mean you considered yourself responsible?

The Witness: We were responsible, and held responsible by them. That is a position that the banks and the forwarders and custom brokers operate between themselves. In other words, it is being placed in trust and in many instances the bank will issue a trust receipt where we have to sign for documents and return them to them in accordance with their instructions, and while there was no trust receipt on this transaction it amounted to the same thing.

The Court: By virtue of what?

The Witness: By virtue of the fact that if we had released——

The Court: Was there a document? By virtue of what document? [1095]

The Witness: In this case money, the check for the merchandise.

Mr. Diether: Your Honor, may that testimony be stricken? The acts of this witness as an agent for Mattoon & Company is not——



(Testimony of James E. Sweeney.)

The Court: It is obviously the conclusion of the witness.

Mr. Bunn: If your Honor please, this witness is an expert in the shipping business.

The Court: I know, but he is testifying concerning the legal relationship between the bank and Mattoon & Company, which is the province of this court. I think the witness is expressing only his opinion concerning their responsibility. It will be received as such and the motion to strike it will be denied.

Q. (By Mr. Bunn): Were the things which you have just said you did, done in accordance with the custom of the trade?           A. Yes. [1096]

\* \* \*

Mr. Bunn: I think counsel are overlooking the fact that under date of July 31, 1946, the bank issued a letter of instructions to Mattoon telling them what to do.

The Court: I recall the exhibit.

Mr. Bunn: I thought counsel may have forgotten.

Mr. Diether: But this transaction that the witness is speaking about is subsequent to the agreement of September 10th, where all acts of the parties were to be without prejudice. You will recall that the instructions of July 31 by the bank to Mattoon & Company was pursuant to the request of Mr. Londono to the bank of that same date, and all we were requesting was that the shipping documents for the reshipment of this wire from the United States to Colombia passed through the hands of the bank.

(Testimony of James E. Sweeney.)

The Court: So that the bank could get back its \$54,000.

Mr. Diether: That is not mentioned in the documents but it was for the purpose of enabling us to control those documents.

The Court: Why did the bank want to control it?

Mr. Diether: For the simple reason that we had this loan of \$54,000.

The Court: Yes. [1097]

Mr. Diether: Of course.

The Court: And you instructed Mattoon & Company to look out for your interests, did you not.

Mr. Diether: No, to return those documents to us.

The Court: So you would be sure and get your money first.

Mr. Diether: That is correct. But at this time the plaintiff had taken possession of the wire. This is only in connection with the reshipment after he had taken possession and was going to reship it out of the country.

The Court: We will get a chance to argue the case sooner or later. The question pending is material and competent. The objection is overruled.

\* \* \*

Q. (By Mr. Bunn): Now, Mr. Sweeney, have you since Friday made an effort to reconcile the figures in the letter from Mattoon to Mr. Londono's attorney, Mr. Bunn, of special expenses, Exhibit 39, the letter dated February 24, 1947, with the supporting documents? Will you answer that yes or no first, [1098] please? A. Yes.

(Testimony of James E. Sweeney.)

Q. Did you find supporting documents for each and every dollar of the items listed in that letter except the \$750 charge by Mattoon?

A. All except that and approximately \$45 on one of the items.

The Court: Which item?

The Witness: It is the figure \$1,621.62.

The Court: Your adding machine tape shows \$1,621.62. You could not find the supporting document for \$45 of that item?

The Witness: That is right.

Q. (By Mr. Bunn): Now that adding machine tape you said was made before this trial commenced?

A. Yes.

Q. Made on or about the date of the letter you testified about?

A. On or about the date of the letter.

Q. Now do you have any explanation for the absence of that last mentioned document or documents approximating \$45?      A. No.

The Court: Do you have any itemization of the \$750 charge, that is, how you arrived at that? [1099]

The Witness: No.

The Court: It was an arbitrary figure selected as being what Mattoon & Company considers the value of their extra services in connection with this whole transaction?

The Witness: Yes.

Q. (By Mr. Bunn): Do you yourself have any personal interest at all in the payment or non-payment of that \$750 item?      A. No.



(Testimony of James E. Sweeney.)

The Court: Is it customary in the course of business by customs brokers in their dealings in matters of shipment to make additional charges where there is additional work other than that contemplated by the original transaction?

The Witness: Yes.

Q. (By Mr. Bunn): Do you know whether or not any of the wire which you, on the Moore-McCormack dock on the afternoon of July 31, 1946, directed be sent back to Pier 1-A, Long Beach, was returned to Pier 1-A, Long Beach? A. Yes.

The Court: Was it?

The Witness: It was. [1100]

\* \* \*

Q. (By Mr. Bunn): Were all the charges to which you have testified here by Mattoon to the Citizens Bank and to Londono, except the \$750, paid? A. Yes.

\* \* \*

Q. Mr. Sweeney, have you ever before since last Friday seen the four rolls of barbed wire which are in the courtroom marked Plaintiff's Exhibits 51, 52, 53 and 54? A. Yes.

Q. Where did you first see those rolls of barbed wire?

A. I saw them at Pier A selected by Mr. Bunn.

Q. You mean you heard the designation of those being [1102] made by Mr. Bunn to be moved?

A. Yes.

(Testimony of James E. Sweeney.)

Q. When did you next see those four rolls of barbed wire?

A. At Koppel Brothers' warehouse in Wilmington.

Q. Approximately when or how long after the selection you have just mentioned?

A. Five or six months.

Q. Can you trace the movements and locations of those four rolls of wire since you first saw them at Koppel's place?      A. Yes.

Q. Will you trace them?

A. At a date I don't remember I went to Koppel's with a truck of United Drayage Company, picked them up and brought them to United Drayage Company located at 1520 East Eighth Street in Los Angeles, and they were left there until—I also accompanied the truck of the United Drayage Company to deposit them over there.

Q. In this courtroom?      A. Yes.

Q. After this trial commenced?

A. I don't remember the date.

The Court: It was after the trial commenced?

The Witness: Yes, after the trial started. [1103]

The Court: I can take judicial notice of the fact that they were not here before.

Q. (By Mr. Bunn): And did you after you escorted those rolls of wire from Koppel's place to United Drayage Company's place and before you caused them to be brought into this courtroom, did you see them on any other occasions at Drayage Company?

(Testimony of James E. Sweeney.)

A. Yes, frequently, because I had had, and have, considerable business with United Drayage Company.

Q. Mr. Sweeney, calling your attention generally now to what we call the supporting documents for those expense items in the letter from Mattoon to Mr. Bunn, Exhibit 39 for identification, did you as an employee of Mattoon & Company cause each of the supporting items of expense to be paid to the persons, firms or corporations by which the charges were made to Mattoon? A. Yes.

Q. And then in turn billed Mr. Londono for them? A. Yes.

Q. What part, if any, did you have in directing the performance of the services?

The Court: For which the charges were made?

Mr. Bunn: For which the charges were made.

The Witness: That was part of the forwarding service provided. [1104]

Q. (By Mr. Bunn): Did you have any part in directing that service? A. Yes, all.

Q. And then did you have any part in checking the propriety of the bills received therefor?

A. Yes.

Q. And did you or did you not satisfy yourself in each case of the propriety of such bill before it was paid?

Mr. Laven: Just a moment. I will object to that as calling for a conclusion of the witness. Whether it satisfied him or not would be a conclusion.

Mr. Diether: I join in the objection.



(Testimony of James E. Sweeney.)

Mr. Dasteel: I join in the objection.

Q. (By Mr. Bunn): Did you or did you not determine that the bill was accurate in each case before you paid it?

Mr. Diether: I object to that as calling for a conclusion.

The Court: Overruled.

The Witness: Yes. [1105]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, answer yes or no to this question: Was there in 1946 and 1947 any custom in vogue in the Los Angeles Harbor, including Long Beach, Wilmington and San Pedro as such Los Angeles Harbor, regarding the placing of special guards on docks for the protection of merchandise on such docks awaiting removal therefrom?

\* \* \*

The Court: I think that the only thing you are concerned [1106] with here is whether or not it was a custom in the business by the person who was the recipient of the goods to place guards on the dock, not whether or not it was generally the custom for anybody else to. That is your question.

Mr. Bunn: Yes, that is right. That is what I intended my question to mean.

The Court: Was there a custom in the business, in the shipping business, for recipients of goods or shippers themselves to place special guards over goods while it was on the dock?

\* \* \*

(Testimony of James E. Sweeney.)

A. No.

The Court: What is the custom in the business with relation to the responsibility—when I say the custom in the trade I think you know what I mean—with relation to the responsibility for the safety of goods prior to the time that they are taken possession of away from the dock, that is, to be moved from the dock? [1107]

\* \* \*

Mr. Bunn: May I observe that in the cross-examination of Mr. Londono Mr. Diether I think specifically asked Mr. Londono if he did place a guard there.

Mr. Diether: Not me.

Mr. Bunn: Somebody did, or take any precautions on his own behalf to protect the wire there, and the inference certainly was that the interrogator thought he should have. I want to know whether or not it is customary for the owner of the merchandise to do that.

The Court: You have asked and answered that question. My question is superfluous. I will withdraw it. [1108]

\* \* \*

The Court: I think I will ask a question.

What is the custom of the trade with relation to the time when a receiver gets custody and control of the goods, that is, with relation to the time that it is on the boat, or on the dock; when is it customary in the trade?

(Testimony of James E. Sweeney.)

Mr. Diether: You mean when he can get possession of the merchandise?

The Court: What is the custom in the trade. When does the trade regard the goods as having come into the hands of the recipient?

Mr. Diether: I will object to that as calling for a conclusion of the witness.

The Court: Is there any custom?

Mr. John Morrow: I object to that.

The Court: Overruled.

The Witness: It is not a custom, it is a practice. The receiver of the merchandise when he signs for it, in other words, when it is picked up and put on a truck or rail car.

The Court: When he signs for it?

The Witness: To the dock operator, he has taken delivery. [1109]

Q. (By Mr. Bunn): For removal, you mean?

A. Yes.

Q. When he signs for it for removal from the dock? A. Yes.

Q. As long as it is on the dock, according to the practice of the trade, who is in possession?

Mr. Diether: Just a moment. That is leading and suggestive and calls for a conclusion of the witness.

The Court: When he signs for it?

The Witness: Yes.

The Court: Now he may sign for it before removal from the dock, might he not?

The Witness: No.

The Court: The practice is only to sign for it



(Testimony of James E. Sweeney.)

when it is removed from the dock?

The Witness: Yes.

Q. (By Mr. Bunn): Is there an established practice regarding insurance on cargoes on the dock? [1110]

\* \* \*

The Court: Any kind of insurance.

\* \* \*

The Court: And they all relate to the safety of goods. The question is any kind of insurance. The objection is overruled. [1111]

\* \* \*

The Court: I think it is admissible in view of the foreshadowed contentions by questions on cross-examination. I do not remember what the precise question was, but what counsel wants to know is what the practice in the trade is concerning who carries the insurance after goods are unloaded and placed upon the dock and before they are taken from the dock, the shipper, the ship or the consignee or consignor. [1112]

\* \* \*

The Witness: It is the steamship company and the dock operator in conjunction or separately however they arrange it.

Mr. Hubert Morrow: I didn't hear the answer.

The Court: The steamship company and the dock operator, either in conjunction or separately, however they arrange it. [1113]

\* \* \*

(Testimony of James E. Sweeney.)

Q. Mr. Sweeney, did you cause to be placed any insurance on any of the, what we will call the Londono wire on Pier 1-A at Long Beach in 1946?

A. Yes.

Q. At whose instruction, if any, did you cause such insurance to be placed?

A. The Citizens Bank. [1114]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, I call your attention to Exhibit 39-F for identification, which is the copy of Glens Falls Insurance Company policy No. C-6697, and ask you if you have found the language therein which fixes the commencement——

The Court: Let us identify the policy. You have there a copy of an insurance policy with Glens Falls Insurance Company covering what?

The Witness: Covering insurance of the barbed wire, 2000 tons.

The Court: 2000 tons of barbed wire located where?

The Witness: Located at Pier A, Long Beach.

The Court: What is the date of the policy?

The Witness: July 31, 1946.

The Court: Did you secure the policy?

The Witness: Yes.

The Court: That is the policy you secured in accordance [1117] with your testimony that you did so at the instructions of the Citizens National Bank?

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: Very well.

Q. (By Mr. Bunn): Now have you found in the policy the language purporting to fix the time of commencement of coverage? A. Yes.

Q. Will you read it, please?

A. The date of the policy, July 31, 1946, indicates the start of the coverage.

Q. And is there any more specific language in there?

A. Yes. It is to cover the wire at Long Beach, Pier A, to be delivered to other piers in Los Angeles Harbor or September 15, 1946, whichever first occurs.

Q. Does the word "be," b-e, appear in that sentence? A. No.

Q. You said "to be delivered."

A. No, "be" does not appear in that sentence.

The Court: Read the sentence.

The Witness: "Long Beach Pier A to delivered to other piers in Los Angeles Harbor or 9/15/46 whichever first occurs."

The Court: Do you know whether or not there was any other insurance on that wire at that time carried by anybody?

The Witness: The dock operators automatically have [1118] coverage.

The Court: In other words, of your own knowledge the dock operators have what is known generally as blanket insurance?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Sweeney——



(Testimony of James E. Sweeney.)

Mr. Diether: Just a moment. I think that before the sentence which the witness has just read should also be read this portion of the policy——

The Court: Somebody is going to introduce the whole policy in evidence, I suppose.

Mr. Diether: It says “laden”——

The Court: Let me see it.

(The exhibit referred to was passed to the Court.)

The Court: It reads:

“Barbed wire, 2000 tons—55,428 rolls, laden (under deck) on vessel and/or vessel or vessels and/or connections at and from Long Beach Pier A to delivered to other piers in Los Angeles Harbor or 9/15/46 whichever first occurs.”

The portion prior to the words “Long Beach Pier A” are printed; the words “Long Beach Pier A to delivered to other piers in Los Angeles Harbor or 9/15/46 whichever first occurs” are in typewriting, as is also the name of the insured, [1119] J. B. Londono.

Did you ever receive any instructions from Mr. Londono to secure this insurance?

The Witness: No.

Q. (By Mr. Bunn): Now, Mr. Sweeney, calling your attention generally to all of the documents which you have testified about this morning from Mattoon’s file and which has been appropriately marked here for identification, I ask you whether or

(Testimony of James E. Sweeney.)

not those documents were either prepared in Mattoon's office or received in Mattoon's office from other places indicated on their headings in the ordinary course of the business of Mattoon & Company's handling of the barbed wire in question.

A. Yes.

Q. Now did you at any time converse with Mr. Banning of Matson Navigation Company regarding this barbed wire in question? A. Yes.

Q. Were you acquainted with Mr. Banning before July 29, 1946? A. Only over the phone.

Q. Had you had business with him over the phone before? A. Yes, some.

Q. Where and when in whose presence, if anybody else's, did you converse with Mr. Banning about this barbed wire? [1120]

The Court: For the first time?

Mr. Bunn: Yes, for the first time.

The Witness: The day that delivery of the wire to Mr. Londono was stopped at the dock, I called Mr. Banning.

Q. (By Mr. Bunn): Do you know what date that was? A. No, I don't.

Q. What conversation ensued?

The Court: What do you mean by the "day when delivery of the wire was stopped to Mr. Londono at the dock"? Will you describe the occasion so that we can identify it?

The Witness: Well, the wire was being discharged and taken delivery of for several days; I

(Testimony of James E. Sweeney.)

would estimate perhaps about the 8th or 9th of August.

The Court: Was your conversation with Banning?

The Witness: About then; yes.

The Court. The early part of August?

The Witness: Yes.

Q. (By Mr. Bunn): What conversation ensued?

Mr. John Morrow: If the Court please, we don't know as yet what conversation he is calling for, but I take it that we may have our objection and motion to strike in the event it concerns a phase that we claim is not involved in the issues of the case, so we won't be precluded from objecting. [1121]

Mr. Diether: There is no evidence in the record yet of any stoppage of any delivery of any wire on or about August 8th or 9th, 1946.

Q. (By Mr. Bunn): Mr. Sweeney, what do you mean by stoppage of delivery to Mr. Londono?

A. They wouldn't allow any transportation company that we had issued orders to to pick it up to remove it from the dock.

Mr. Diether: Who wouldn't?

The Witness: The dock offices as represented by Matson.

Mr. John Morrow: Just a minute. I move to strike "as represented by Matson," if the Court please.

The Court: It may be stricken. I think perhaps you can fix the time by reference to previous testimony in the case.



(Testimony of James E. Sweeney.)

Mr. Bunn: He has fixed it now as about the 8th or 9th of August, I think he said, in answer to your Honor's question.

The Court: Mr. Londono testified that on some occasion he was there and attempted to secure selective delivery of the wire, his right to take good wire, as he called it, and that the net result was that he was told by someone that Gonzalez & Blanco had to have the choice, and that he couldn't have it until they had theirs, or something like that. Are you familiar with that occasion? [1122]

The Witness: Yes.

The Court: Is that the occasion you are speaking of?

The Witness: That is part of the occasion because they stopped us from taking delivery on any part, good or bad.

The Court: Let us fix that date, counsel.

Mr. Diether: May the witness' answer that they stopped, be stricken as a conclusion?

Mr. John Morrow: We join in the motion.

Mr. Laven: The Government makes the same motion.

The Court: Motion granted.

Q. (By Mr. Bunn): Mr. Sweeney, will you fix as definitely as you can the date—withdraw that.

Did you hear any instructions given on the dock at Pier 1-A, Long Beach, regarding selective delivery to Mr. Londono?

Mr. Dasteel: I object on the ground that that would be hearsay.

(Testimony of James E. Sweeney.)

Mr. Diether: You are asking about a conversation with Banning in trying to fix that date. Are you now shifting to some other subject?

Mr. Bunn: The Court asked me to try to fix the date in relation to these other things.

Mr. John Morrow: In trying to fix the date of the conversation, can't counsel confine his questions so he won't include all sorts of things that are objectionable? We have [1123] no opportunity to object to conclusions and the statement of counsel or anything by Mr. Sweeney.

The Court: Mr. Sweeney, can you have reference to the documents here and refresh your memory as to what date you are speaking of now in relation to your conversation with Banning?

The Witness: I don't think it is in the documents.

The Court: Would any of the documents refresh your recollection as to the event?

The Witness: As far as Mattoon's files are concerned, they would not. That day escapes me. I can't remember it. Perhaps if I heard someone's testimony on it I could.

Mr. Dasteel: If your Honor please, if the witness says he doesn't remember, that is all there is to it.

The Court: He says he does not remember the date.

Mr. Bunn: He doesn't have to remember the specific date in order to testify about a conversation.

Mr. Hubert Morrow: The witness says it is about the 8th or 9th of August.

(Testimony of James E. Sweeney.)

Mr. John Morrow: That is sufficiently definite as far as we are concerned.

The Witness: Excuse me. If the date is that important, since I think the shipping date of the first portion, which went out by Moore-McCormack on ladings dated August 15, it is possible that it was later than August 15th or about that time. [1124]

The Court: Was it at Banning's office or at your office?

The Witness: No, it was by telephone.

Q. (By Mr. Bunn): Did you make the call or did he make the call? A. I made it.

Q. Did you call Matson Navigation Company in the ordinary course of the telephone activity?

Mr. O'Malley: I object to counsel leading the witness. Let him ask him what he did. You have been leading the witness ever since you started this trial.

The Court: Objection overruled. Let us get on with the trial.

Mr. Bunn: You may answer.

The Witness: May I hear the question again?

(The question referred to was read by the reporter as follows:

("Q. Did you call Matson Navigation Company in the ordinary course of the telephone activity?")

The Witness: Yes.

Q. (By Mr. Bunn): And you talked with whom?

A. Mr. Banning.



(Testimony of James E. Sweeney.)

Q. What conversation ensued—one more question. Were you familiar with Mr. Banning's voice?

A. Yes. [1125]

Q. Did the gentleman on the other end of the line state that he was Mr. Banning? A. Yes.

Mr. Bunn: I think that is sufficient foundation for a telephone conversation, your Honor.

Mr. Diether: This is hearsay testimony as to the bank and I object to it on that ground.

The Court: Objection overruled, subject to a motion to strike.

Mr. Dasteel: I join in the objection.

The Court: Same ruling.

Mr. Diether: Will our objection go to all this line of testimony?

The Court: Yes.

Q. (By Mr. Bunn): What conversation ensued, Mr. Sweeney?

A. I said to Mr. Banning that the delivery to Londono had been stopped, and he was well aware of it, or he answered that he was well aware of it, and I explained that I was phoning him because no one else in Matson's organization could offer us a good explanation. And he said he was unable to do so because those were his instructions from the WSA attorneys.

Q. What were his instructions, did he say?

A. His instructions were not to allow further delivery of the wire to Londono. [1126]

I asked him if he objected if we would get in touch with the War Shipping Administration's attorneys,

(Testimony of James E. Sweeney.)

and he said no, and he furnished us with the name and phone number of the attorney in San Francisco.

The Court: Did he say who it was?

The Witness: It was Mr. Ball.

Q. (By Mr. Bunn): Where?

A. In San Francisco.

Q. Did you call Mr. Ball? A. Yes, I did.

Mr. O'Malley: Is this all the conversation?

The Witness: That was all the conversation with Mr. Banning.

Q. (By Mr. Bunn): Did you call Mr. Ball?

A. I phoned him late on that particular afternoon.

Q. Did you put in the call yourself?

A. I did; yes.

Q. What office did you ask for? What office did you ask the telephone company to connect you with?

A. The War Shipping Administration office in San Francisco.

Q. Did you give her the name of the man you wanted to talk to? [1127]

A. Yes. It was person-to-person.

Q. Were you thereafter connected with somebody? A. Yes.

Q. Did the person at the other end of the line identify himself? A. Yes.

Q. As who? A. Mr. Ball.

Q. Then did you have a conversation with Mr. Ball on the telephone? A. Yes.

Q. What conversation ensued between you?

A. I asked him what reason or what basis they

(Testimony of James E. Sweeney.)

were holding up the delivery of the barbed wire to Mr. Londono. His response was not concrete——

Mr. Laven: I object to that.

Q. (By Mr. Bunn): Tell what he said.

A. I can't remember the exact words.

Q. In substance.

A. He stated that Mr. Londono had no bill of lading and that their position was that one claim was better than two.

Mr. Laven: What was that?

The Witness: That one claim was better than two on the [1128] ship.

Mr. O'Malley: Is this the conversation?

The Witness: This is the substance of the conversation.

Mr. Laven: I object to the conclusion of this witness.

Mr. Bunn: He didn't say it was a conclusion.

The Court: Go ahead.

The Witness: There was nothing else to be accomplished so the phone conversation was ended.

Q. (By Mr. Bunn): Was the name of Gonzalez & Blanco mentioned in the conversation?

Mr. Dasteel: I object to that as leading, your Honor. He should simply ask this witness about the conversation.

The Court: Overruled.

The Witness: It might have been.

The Court: You do not recall?

The Witness: No.

Q. (By Mr. Bunn): Mr. Sweeney, at the termi-



(Testimony of James E. Sweeney.)

nation of the conversation to which you have just testified, had you been given any new or different instructions from Mr. Ball?      A. No.

Q. Was there after that telephone conversation between you and Mr. Ball any new and different instruction received by you for the removal of any of the wire at Pier A? [1129]

Mr. Diether: From whom?

Mr. Bunn: From anybody.

Mr. Laven: When?

The Court: After the telephone conversation.

Mr. Laven: When after the conversation? It is uncertain, your Honor.

The Court: The question calls for a yes or no answer. Objection overruled.

The Witness: It is no. [1130]

\* \* \*

The Court: After the conversation with Mr. Banning and Mr. Ball that you have just testified to, did you thereafter have any conversations with either of them concerning the same matter?

The Witness: No.

The Court: Did you thereafter receive any instructions or statements purporting to be from either Matson or the War Shipping Administration which was different from the statements made to you by Mr. Banning or Mr. Ball?

The Witness: No.

The Court: That testimony is clear to me [1132] now.

\* \* \*

(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): Mr. Sweeney, were you on the dock again at Pier A, Long Beach, after that conversation?

Mr. Diether: On or after what date? [1135]

The Court: Before we come to that, Mr. Sweeney, were you at the dock on an occasion with Mr. Londono when either he or you had some discussion with the people who were unloading the wire about taking good wire and bad wire?

Mr. Laven: I think your Honor's question was "unloading." It was already unloaded.

The Court: No, Londono testified he was down there with somebody, I have forgotten who else it was, and they went on board and tried to get the good wire placed over in one pile.

Were you there on any such occasion as that?

The Witness: I was with him.

The Court: Did you have the discussion with the people on board or on the dock?

The Witness: No, I had no discussion about separating the good from the bad.

The Court: For delivery to Gonzalez & Blanco or to the other pile?

The Witness: No discussion.

The Court: Did you see chalk marks on the dock at any time?

The Witness: Yes.

The Court: One for Dulien and another one for Gonzalez & Blanco?

The Witness: Yes. [1136]

The Court: When was that first time you saw it?

(Testimony of James E. Sweeney.)

The Witness: That would be about the 31st of July.

The Court: Did you ever have any discussion with anybody connected with the boat or the dock concerning the quality of wire being placed in the Gonzalez & Blanco chalk marks as distinguished from the quality of wire being placed in the Dulien chalk marks?

The Witness: No.

Q. (By Mr. Bunn): Did you after the conversation on the telephone with Mr. Ball observe the removal of any wire from the dock by Gonzalez & Blanco? A. Yes.

Q. Can you tell us whether or not the removal which you observed was from any particular pile of wire on the dock as distinguished from all other piles?

A. Well, at the time I observed it Londono was unable to take any deliveries so Gonzalez was able to take deliveries from any section.

Q. And was he? A. Yes.

Mr. John Morrow: I move to strike the witness' statement, that Londono was unable to do that, as a conclusion.

Mr. Diether: I object to that also.

Mr. Bunn: He has given the reason for the inability. [1137]

Mr. Diether: That is objected to as a conclusion.

The Court: I will receive it as his opinion only. Strictly it is a conclusion, but I will leave it in the evidence and weigh it accordingly. If we are going to



(Testimony of James E. Sweeney.)

back up every time and take 15 minutes on each question we will never get through.

Did Gonzalez & Blanco take wire when you saw them taking it for delivery on this occasion from various piles on the dock?

The Witness: Yes.

The Court: Did you observe the quality of the wire which they took?

The Witness: It was the best.

The Court: Did you observe it? Answer yes or no.

The Witness: Yes.

The Court: What was it?

The Witness: It was the best they could pick out.

Mr. Laven: I object to that as calling for a conclusion of the witness.

The Court: That may be stricken.

What do you mean by the best? Did they take any rusty wire?

The Witness: Yes.

The Court: He took some?

The Witness: Yes. [1138]

The Court: Did they take galvanized wire?

The Witness: Yes.

The Court: So your testimony is that they took what appeared to be the better wire?

The Witness: Yes.

The Court: Regardless of where it was located on the dock?

The Witness: Yes.

The Court: Now what date was that?

(Testimony of James E. Sweeney.)

The Witness: That would be after the day that I had the conversation with Mr. Banning and Mr. Ball.

The Court: Very well.

Q. (By Mr. Bunn): Did you make any observations of the condition of the wire on the dock at any time between July 31 and August 15th with regard to anything other than rust or absence of rust? A. Yes.

Q. What observations did you make?

A. Well, as the wire had been discharged and set aside there were plenty of rolls that had mud, and some obliterated even the appearance of wire, it was just a roll of mud, it appeared. Then others were not quite in as bad condition.

Q. In regard to mud?

A. That is right. And then there were various other stages of rust and corrosion. Some of it was damp and others [1139] had been lying where they could dry out a little bit.

The Court: Was some of it oiled?

The Witness: Yes, partially, maybe one half side oiled and one half side mud.

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No. 12886

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United States  
Court of Appeals  
for the Ninth Circuit.

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CITIZENS NATIONAL TRUST & SAVINGS  
BANK OF LOS ANGELES, Appellant,  
vs.

J. B. LONDONO, DULIEN STEEL PRODUCTS,  
INC., OF CALIFORNIA and DULIEN  
STEEL PRODUCTS, INC., Appellees.

And

DULIEN STEEL PRODUCTS OF CALIFOR-  
NIA and DULIEN STEEL PRODUCTS,  
INC., Appellants,  
vs.

J. B. LONDONO and CITIZENS NATIONAL  
TRUST & SAVINGS BANK OF LOS  
ANGELES, Appellees.

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Transcript of Record  
In Eight Volumes

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Volume III  
(Pages 943 to 1422)

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Appeal from the United States District Court for the  
Southern District of California,  
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FILED

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(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. Diether:

Q. When were you first employed by Mattoon & Company? [1140]      A. October, 1942.

Q. Have you been in the freight forwarding business prior to that time?      A. Yes.

Q. What had been your experience?

A. I had been a clerk in San Francisco for one year for a traffic firm there.

Q. What kind of a firm?

A. Traffic, traffic management firm, known as Bishop & Bailey.

Q. What kind of a business did they have?

A. They handled auditing of freight bills, expediting of freight, and also foreign freight forwarding.

Q. Had you had experience in handling shipping documents prior to the time you went to Mattoon & Company?      A. Yes.

Q. How long had you had such experience?

A. About nine years.

Q. So you started in 1933?

A. Yes. I worked on the Southern Pacific Railroad, that is the first job I had, and I worked in their freight departments up until the time I moved into the forwarding business.

Q. Would you say then since 1933 until 1946, you had been experienced in handling bills of lading on shipments by [1141] rail as well as ocean carrier?

A. Yes.

Q. You stated that you first had contact with

(Testimony of James E. Sweeney.)

Mr. Londono in connection with this transaction about two weeks prior to July 29, is that correct?

A. Yes.

Q. Did he come to your office? A. Yes.

Q. And what conversation did you have with him at that time?

A. He came to say that he believed he had found a supply of barbed wire, which was the purpose for which he had come to this country, and was at present negotiating with Dulien Steel to purchase it.

Q. Did he see you again after he had actually purchased the wire from Dulien Steel?

A. Yes.

Q. Was that a few days later?

A. Well, the purchase date—I don't know the purchase date agreement.

Q. Did he show you a copy of his contract with Mr. Dulien? A. No.

Q. Did he ever tell you how much wire he had purchased? [1142]

A. He said approximately 2000 tons.

Q. He never told you anything more than 2000 tons?

A. He mentioned the total shipment being 2300 or 2700 tons.

Q. That is all that you ever heard?

A. Yes.

Q. Did he ask you to reserve any space?

A. No, it was too early to tie up any space.

Q. I am speaking about the time after he actually purchased it from Dulien.

A. The instructions were that we were going to

(Testimony of James E. Sweeney.)

move a certain portion, 500 tons, to Cartagena and the balance to Buenaventura, but that that all depended on the arrival of the ship from Honolulu.

Q. When did he first give you instructions to reserve space?

A. He didn't give me any specific instructions. He left it up to me.

Q. Did you make any such reservations?

A. As soon as I knew when the White Squall was going to be in and discharging I went ahead.

Q. When did you make the first reservation for space?

A. I don't remember.

Q. Was it prior to July 26?

A. No. [1143]

Q. Was it prior to July 27?

A. It might have been about July 27, 28. There was a strike pending at the dock and we just couldn't move to do any booking or anything else.

Q. What space did you reserve?

A. Tentatively 500 tons on the Moore-McCormack.

Q. What boats?

A. Well, there were two shipments that went out and it didn't matter which one. They were both leaving about the same time.

Q. Did you get a definite commitment for a certain tonnage on any particular vessel?

A. No.

Q. Did you ever receive any commitment as to any definite tonnage on any particular vessel?

A. No, we had a tentative offer and were protected for the space, then the steamship company left it up to us to cooperate to tell them as soon as possible how much we could actually offer.



(Testimony of James E. Sweeney.)

Q. Did Mr. Londono say anything to you about the shipping documents—well, this is all prior to July 27, when he first came to see you in connection with the reshipment of the wire to Colombia?

A. He merely advised that he would give me the names of the consignees when he was ready. [1144]

Q. Did he ever tell you about how you were going to get delivery of the wire?

A. Well, he didn't have to. He knew what we needed——

Q. Just answer my question. Did he?

A. No.

Q. He did not?

A. What is the question, please?

Mr. Diether: Read the question.

(The question referred to was read by the reporter as follows: "Q. Did he ever tell you about how you were going to get delivery of the wire?")

The Witness: No.

Q. (By Mr. Diether): Did he ever mention the fact that he was going to get a bill of lading from Dulien? A. No.

Q. He never mentioned that at all? A. No.

Q. Did he mention anything about the character of the bill of lading that he was going to get from Dulien, whether it would be clean or not?

A. No.

Q. Or whether it would be order?

A. No. [1145]

Q. Did you have any conversation with Mr. Lon-

(Testimony of James E. Sweeney.)

dono prior to July 27, with respect to when you would know that he had purchased the wire or when he was going to be able to get possession of it?

The Court: Which one do you want to know? You have two questions there.

Mr. Diether: Let's make it with respect to when he was going to be able to get possession of the wire.

The Witness: Yes, I had a conversation.

Q. (By Mr. Diether): Prior to July 27, when did he tell you? A. Well, about that time.

Q. What did he say?

A. It is hard to answer that because it was a matter of his providing the necessary documents for us to get the release from the steamship company to move his stuff and that is the only way I can explain the conversation.

Q. Did he say what documents you were going to get?

A. He didn't have to say. We knew what we needed and he knew we knew what we needed.

Q. How do you know when you were going to get them? A. I didn't know.

Q. Mr. Londono never gave you any information on that?

A. We merely knew that when the ship arrived as soon as the documents were transmitted through the necessary [1146] channels we would get them and when we received them we could go to work to move the freight.

Q. Mr. Londono never told you he would receive them from any particular person or party?

(Testimony of James E. Sweeney.)

A. No.

Q. Did you have any discussion with Mr. Londono relative to the fact that the quantity of wire that he had purchased had been reduced at any time prior to July 27?      A. I don't remember.

Q. You have no recollection of any conversation in which he informed you that the quantity of wire he purchased had been reduced?

A. No direct recollection.

Q. Did Mr. Londono instruct you to take possession of the wire for him and arrange for reshipment to South America?

A. Well, the thing just developed——

Q. Just answer the question. Did he? Answer yes or no.      A. No.

Mr. Bunn: I think he is trying to answer the question.

Q. (By Mr. Diether): Did you know where the wire was going to be made available?

A. Where or when?

Q. Where.      A. Yes, I knew. [1147]

Q. When did he tell you that?

A. I determined that.

Q. How?      A. By contacting Matson.

Q. Did you know when it would be available?

A. Approximately.

Q. Did you know that the shipment of barbed wire on the White Squall, of which Mr. Londono was going to get his 2000 tons, was in excess of that amount?

A. Yes, I knew by the time we were ready to take delivery.



(Testimony of James E. Sweeney.)

Q. When did you know that? What date?

A. Probably the 27th or 29th, I don't remember.

Q. Do you know that the shipment was for 2300 tons?

A. Yes.

Q. And that Mr. Londono was to get 2000 tons of it?

A. Yes.

Q. And you knew that on or about the 27th of July?

A. About the 29th.

Q. I have in my notes that you had some conversation with Mr. Londono on July 26th. Did you see him on that day?

A. I don't remember that I did.

Q. You don't remember any conversation with him at that time?

A. No. [1148]

Q. Did you have any discussion with Mr. Londono with respect to inspecting the wire on the dock before you took delivery?

A. No.

Q. Did anybody suggest that he wished to inspect the wire before you took delivery?

Mr. Bunn: Before what date?

Mr. Diether: At any time before he took delivery of the wire.

The Witness: No——

Mr. Bunn: I object to the question as uncertain, indefinite, in the light of the testimony that has already gone in here about dates upon which wire was removed from the dock on Mr. Londono's behalf. I think counsel should fix the date.

The Court: I think it is sufficient. He answered it and he said "No."

Q. (By Mr. Diether): Did you know prior to

(Testimony of James E. Sweeney.)

July 29th, 1946, that you were going to receive any documents from the Citizens Bank?

A. I may have. I don't remember.

Q. You remember no conversation with Mr. Londono with regard to any such documents?

A. Well, it is possible. I can't remember the exact conversation. I knew that he was going to handle it through [1149] the bank.

Q. Did Mr. Moran at any time call you on the telephone on July 29? A. No.

Q. Did you have any conversation with any officer of the bank on July 29?

A. None that I remember.

Q. Officer or employee? A. No. [1150]

\* \* \*

Q. Prior to July 29, 1946, did Mr. Londono instruct you to segregate 2000 tons of the best 2300 tons of the shipment? A. No. [1152]

The Court: Did you ever know whether or not there were 2300 tons in the shipment?

Mr. Diether: He testified this morning he did, your Honor.

The Court: He said—your question was whether or not he had been advised that there were only 2000 tons—and his answer was that it was 2000 or 2300 or 2700, he didn't remember which.

Mr. Diether: I think he told me in part of my cross-examination that he knew there was 2000 tons of a 2300-ton shipment.

Q. Is that not correct?

A. That is my recollection.

(Testimony of James E. Sweeney.)

Q. And you knew that about July 27, I believe you said?      A. Well——

Q. 27 or 28 I believe were the dates you used.

A. Someplace along in there, yes.

Q. Did Mr. Londono prior to July 29, 1946, instruct you to separate the galvanized and black wire?

The Court: Prior to July?

Mr. Diether: July 29, 1946.

The Witness: I believe he did. Not in specific words to my knowledge, but it was his intention to separate it for different consignees in [1153] Colombia.

Q. (By Mr. Diether): Did he tell you any particular quantity he wanted to separate?

A. No, but it was all tentative at the time.

Q. I believe you stated just before the noon recess that you had had no conversation with any officer or employee of the bank on July 29.

A. That is my recollection, that I did not.

Q. And that was both oral and written? Does that apply to oral or written?

A. No, oral only.

Q. I show you Plaintiff's Exhibit 7 for identification, which is a freight bill. Did you receive that document on July 29, 1946?      A. Yes.

Q. And together with a letter?      A. Yes.

Q. From whom?

A. From the Citizens Bank.

Q. Did you acknowledge receipt of the letter on a carbon copy of it?      A. Yes.



(Testimony of James E. Sweeney.)

Q. And what did you do with the carbon copy of the letter on which you acknowledged receipt?

A. Returned it to the messenger that brought the original [1154] from the bank.

Q. On the carbon copy of that letter did you also acknowledge receipt of any documents?

A. Yes.

Q. What documents? A. This one.

Q. Did you know at the time that you acknowledged receipt of it that it was a freight bill?

A. I didn't take that into consideration.

Q. Did you look at the document?

A. I looked at it, yes.

Q. Did you realize it was a freight bill?

A. I realized it was a release I needed to order the freight out.

Q. Answer my question. Did you know at the time you acknowledged receipt of that document that it was a freight bill? A. Yes.

Q. Did you receive more than one letter from the Citizens Bank on July 29, 1946? A. No.

Q. You just received one letter? A. Yes.

Q. I show you defendant bank's Exhibit C-D. Is that the letter you received on July 29th? [1155]

A. No.

Q. I show you defendant bank's Exhibit C-D1—that is your signature at the bottom of that document, isn't it? A. Yes.

Q. Did you acknowledge receipt of that document on July 29, 1946? A. No.

(Testimony of James E. Sweeney.)

Q. When did you receive Defendants' Exhibit C-D?      A. I don't know the date.

Q. Was it after July 29?      A. Yes.

Q. How much after?

A. About two or three days.

Q. How did you receive it?

A. I don't remember.

Q. Do you remember signing Defendants' Exhibit C-D1?

A. I don't remember the day. I know I did.

Q. You have no recollection of when you did it?

A. Not the exact date.

Q. Or under the circumstances under which you acknowledged receipt of that letter?

A. I believe by messenger.

Q. You think it was sent to you by messenger?

A. I think so.

Q. Did you deliver the carbon copy of that letter to [1156] the messenger who delivered it to you?

A. Yes.

Q. Was the messenger from the Citizens Bank?

A. I assume he was.

Q. Were there any documents delivered with that letter, Defendants' Exhibit C-D?

A. That is the part that is not clear in my memory. It transmits bill of lading 29 but I believe——

Q. Just answer the question.

The Court: Let him answer the question.

The Witness: I believe that the transmitted document was already in our possession.

(Testimony of James E. Sweeney.)

Q. (By Mr. Diether): You mean the bill of lading?

A. As it is called there.

Q. Bill of lading No. 29 was already in your possession?

A. Not a bill of lading.

The Court: What was it?

The Witness: The freight bill.

Q. (By Mr. Diether): Did you read this letter before you acknowledged receipt of it?

A. Well, the instructions—yes, I read it.

Q. And yet you acknowledged receipt of a bill of lading [1157] and at that time you knew it was a freight bill?

A. Yes.

Q. Is it your practice, or was it your practice to acknowledge receipt of documents which you didn't receive?

A. The practice, or in that particular case it was a matter of getting something to release the merchandise to go to work to deliver the merchandise to another ship.

Q. On July 29, when you received Plaintiff's Exhibit 7 for identification, was there any other document received by you except the original of the letter from the bank, together with a carbon copy and the freight bill?

A. On the 29th, no.

Q. You didn't have any other little, small form of receipt?

A. No, nothing.

Q. Did you ever notify the Citizens Bank that you had not received a bill of lading when you signed that letter after you signed that letter, Defendants' Exhibit C-D?

A. No.

Q. On July 29, after you received that freight



(Testimony of James E. Sweeney.)

bill and the letter from the bank, what action did you take, if any, with respect to this transaction?

A. Well, phone up the Matson Line.

Q. Who did you talk to?

A. As I recall, Mr. Ford there, the freight agent at [1158] Wilmington.

Q. What time of the day was it that you called him?

A. I don't remember.

Q. Was it immediately after you received this letter?

A. Very shortly.

Q. What time of day did you receive that freight bill?

A. I don't know.

Q. You have no recollection whether that was in the morning or afternoon?

A. We will say the middle of the day.

Q. The middle of the day?

A. Yes.

Q. And you called Mr. Ford about the middle of the day?

A. Approximately.

Q. What conversation did you have with Mr. Ford?

A. That I had the necessary release to go ahead and take delivery of the merchandise, and I believe he had been in touch with Dulien Steel more or less confirming what I told him.

The Court: Did he say so? Or did he indicate that to you?

The Witness: Yes, he indicated that he knew that the merchandise had been sold to someone.

The Court: He knew what you were talking about then?

The Witness: Yes, he did. [1159]

(Testimony of James E. Sweeney.)

So it was that part that was taken care of, and I told him that we needed prompt delivery or to get the wire off the dock to make a sailing and would issue in writing delivery orders.

Mr. Hubert Morrow: A little louder, please.

Mr. Diether: What was the last part of the answer?

The Witness: That we would issue in writing delivery orders to a truck company that we would designate authorizing them to pick up the freight.

Q. (By Mr. Diether): Is that all the conversation? A. That was it.

The Court: Did you issue delivery orders in writing?

The Witness: Yes.

The Court: Are they in your file?

The Witness: Yes.

Q. (By Mr. Diether): Did you mention the fact that you were representing Mr. Londono in this transaction? A. Yes.

Q. And did you tell him what documents you had received?

A. I told him that I had the release on it.

Q. Is that the word you used?

A. That is the word. [1160]

Q. By "release" what did you refer to?

A. The paid receipted freight bill.

Q. Did you mention the fact that you had a paid receipted freight bill?

A. Not in those words, I don't think.

(Testimony of James E. Sweeney.)

Q. Did you mention to him the fact that it was Mr. Londono who had purchased 2000 tons of a 2300-ton shipment?      A. No.

Q. Did you mention anything about the 2300-ton shipment?      A. I don't recall.

Q. Did Mr. Ford agree to deliver the merchandise to you on your order?

A. Yes, with the agreement that we were to send the necessary orders to whatever transportation company we designated.

Q. Did you have any discussion with Mr. Londono after you talked to Mr. Ford?

Mr. Bunn: On the same day, you mean?

Mr. Diether: The same day; July 29th.

The Witness: I may have regarding the details of the shipment.

Q. (By Mr. Diether): Did he come in the office?

Mr. Bunn: I move to strike the answer as not responsive [1161] to the question. It is a question that could have been and should have been answered yes or no. The witness says I may have, which clearly is an indication that he doesn't know whether he did or not.

The Court: It will stand for his answer.

Q. (By Mr. Diether): Did Mr. Londono come into your office on July 29?

A. I don't remember that.

Q. At the time you talked to Mr. Ford, did you know that the shipment of the 2300 tons of wire was direct to Dulien Steel Products Company?

A. That is what the freight bill indicated.



(Testimony of James E. Sweeney.)

Q. You knew that then as soon as you received the freight bill?

The Court: That is argumentative, counsel.

Q. (By Mr. Diether): When did you know that the bank had paid the purchase price for this wire?

The Court: You mean when did he first know?

Mr. Diether: When did he first know?

The Witness: I didn't know the exact date because it was an assumption. I had the release and it was up to me to assume that the bank had paid, which would be the 29th.

Q. (By Mr. Diether): So you assumed on the 29th when you received this [1162] freight bill, that the purchase price had been paid? A. Yes.

Q. Did you have any discussion with Dulien or any representative of Dulien on July 29?

A. No.

Q. When did you issue orders to the trucking company to pick up this wire that belonged to Mr. Londono?

The Court: First?

Mr. Diether: First.

The Witness: July 29.

The Court: What trucking company?

The Witness: M & M Transfer Company.

The Court: Is it in your file, the written order?

The Witness: Yes. It is that erroneously written one. In other words, for a wrong amount because—

The Court: You mean the erroneously written bill of lading?

(Testimony of James E. Sweeney.)

The Witness: Yes, and similar delivery order.

Mr. Hubert Morrow: Exhibit 44 for identification, I think.

The Court: Would your instructions be in that supporting documents file, No. 39?

Mr. Diether: 40-4.

The Court: 40-4, but your instructions to M & M Transfer Company, they would be in your supporting documents? [1163]

The Witness: Yes, that is right.

The Court: Which was Exhibit 39, I think.

Mr. Diether: Mr. John Morrow has just handed me from his file the original of a delivery order from Mattoon & Company to Matson Navigation Company, and it is the original of the document in question.

The Court: We will have it marked in just a moment, after the clerk finds the first part of Exhibit 39. Did somebody borrow it?

The Witness: I think it is on his left over there, on the edge of his desk.

The Court: We are looking for the first part of Exhibit 39. Here it is.

(The exhibits referred to were passed to the Court.)

The Court: Now his question related to orders, shipping orders, to M & M Transfer Company. You said they were in the supporting documents of Exhibit 39.

The Witness: I misunderstood you. It is in the

(Testimony of James E. Sweeney.)

supporting documents of each shipment. In other words, we issued a delivery order to start the shipment rolling and everything else comes behind it.

The Court: That was in what you described this morning as the erroneous bill of lading?

The Witness: Yes.

Mr. Hubert Morrow: Erroneous bill of [1164] lading?

The Court: I have forgotten the exhibit number, but the witness testified——

Mr. Dasteel: It is No. 44.

Mr. Hubert Morrow: Your Honor said erroneous bill of lading.

The Court: It was an erroneous proposed bill of lading.

Mr. Bunn: On a shipment to South America. That is the one your Honor is referring to, is it not?

The Court: The witness testified this morning and he identified some documents and he said they were erroneous, they were a proposed bill of lading but they were never issued.

Mr. Hubert Morrow: Yes.

The Witness: Mr. Diether has them.

The Court: What is the number?

Mr. Diether: 40-4.

The Court: That is all we wanted to know.

Q. (By Mr. Diether): Now the document which I just stated I received from Mr. John Morrow is the original of one of the documents which has been marked Exhibit 40-4——



(Testimony of James E. Sweeney.)

The Court: You mean it appears to be the original?

Mr. Diether: It appears to be.

The Court: There is no evidence to that effect yet.

Mr. Diether: That is right. [1165]

Q. I show you the defendant bank's Exhibit C-U. Is that the delivery order you stated that you sent to Matson on July 29, 1946?

A. Yes, that is the one I recall seeing on the 29th.

Q. Is that the original of the copy which is attached to Exhibit 40-4? A. Yes.

The Court: Let us mark 40-4 and give it a designation now so that we will not get confused. Let me see your C-U.

(The exhibit referred to was passed to the Court.)

The Court: Exhibit C-U is the original of the first document on 40-4, which will be marked 40-4-A.

Mr. Hubert Morrow: I don't understand the Clerk's C-U.

The Court: "C" is for Citizens Bank, and "U" is for the bank's Exhibit U.

Mr. Hubert Morrow: I understand that.

The Court: For identification.

Mr. Hubert Morrow: For identification?

The Court: Yes.

(The document referred to was marked Plaintiff's Exhibit No. 40-4-A for identification.)

(Testimony of James E. Sweeney.)

The Court: The witness has just testified that C-U for identification is the original of 40-4-A for identification.

Mr. Diether: You will stipulate, will you, Mr. John Morrow, that this was received by Matson, this document [1166] C-U, on or about July 29, 1946?

Mr. John Morrow: It is undated. I can't stipulate to that. I will stipulate only that I requested the document, or you subpoenaed it, I believe, and it was delivered to me shortly before the trial of the case, and I presented it. That is the only thing I know about it.

The Court: Just a moment. If I understand correctly, your stipulation is that it was produced to Mr. Morrow by the Matson Navigation Company as part of its files shortly before the trial in response to a subpoena?

Mr. John Morrow: Yes, it was.

The Court: That was your stipulation?

Mr. John Morrow: Yes.

The Court: But you do not stipulate to the date of receipt or anything else?

Mr. John Morrow: No, I don't, because I don't know, and it is undated, your Honor.

The Court: All you know is that they gave it to you as part of their files?

Mr. John Morrow: That is right.

Q. (By Mr. Diether): Mr. Sweeney, on the bottom of defendant bank's Exhibit C-U there appears this in typewriting, "2825 rolls of barbed wire ex White Squall," and then a "B" slash "L," LA 29

(Testimony of James E. Sweeney.)  
attached. Does that "B" slash "L," LA 29 refer to  
bill [1167] of lading, LA-29? [1168]

\* \* \*

The Witness: That refers to bill of lading,  
LA-29.

Q. (By Mr. Diether): Was bill of lading LA-29  
attached to that document? A. No.

Q. How do you know that it was not?

The Court: That is argumentative, counsel.

The Witness: I can answer it.

Q. (By Mr. Diether): Yes. Why do you say it  
was not attached?

A. Well, I couldn't have had the bill of lading  
because the paid receipted freight bill was in exist-  
ence then and which signified the original bill of  
lading had been surrendered to Matson.

Q. Where does it show on the freight bill that  
the original bill of lading had been surrendered to  
Matson? A. The paid receipted stamp.

The Court: You mean that is the custom in the  
trade?

The Witness: That is the practice and custom.

Q. (By Mr. Diether): In other words, just be-  
cause the "paid" portion is on the freight bill, is  
that the reason? A. Yes.

Q. I show you defendant bank's Exhibit C-N for  
identification. I call your attention to the fact that  
there is a marked "paid" Matson stamp on that  
exhibit. [1169]

A. The explanation for that is that you don't



(Testimony of James E. Sweeney.)

see an initial on this paid receipted stamp on the bill of lading, and you do see it on the freight bill, which means——

Q. Just a moment.

Mr. Bunn: Let him finish his answer.

The Court: Go ahead.

The Witness: Well, the explanation for it is that anyone by accident or otherwise could walk into Matson's office and put the freight stamp on, but if they initial it it wouldn't be an authorized initialing and you will find that in all those freight bills throughout all those files, initialing by an authorized [1170] signature.

\* \* \*

The Court: Let me see if I understand. Your testimony, in substance, is that it is the custom in the trade that when somebody presents you in your business a paid receipted freight bill initialed, that is, other than just a rubber stamp, that the assumption is that the bill of lading has been surrendered and the freight has been paid in order to receive the freight bill?

The Witness: Yes.

The Court: Very well.

Q. (By Mr. Diether): Isn't it true, Mr. Sweeney, that you could have received the original freight bill, which is defendants' Exhibit C-N on July 29, and have attached it to defendant bank's Exhibit C-U?

A. You mean received this and attached it to this?

(Testimony of James E. Sweeney.)

Q. Correct. A. No. [1171]

\* \* \*

Q. Isn't it possible that you received the original bill of lading, which is Defendants' Exhibit C-N, and have [1172] attached it to Defendants' Exhibit C-U in transmitting it to Matson Navigation Company on July 29? A. No.

Q. Why did you put the fact that it was attached then on C-U? A. That is an office error.

Q. When did you realize it was an office error?

A. I didn't know the error was on there until this file was brought out some time ago.

Q. You never realized it until how long ago?

A. I can't say.

Q. That is the first time?

The Court: When you say "how long ago" and "you can't say," you mean since the litigation started?

The Witness: Yes.

Q. (By Mr. Diether): Do you have any present recollection, Mr. Sweeney, that there was no document attached to Defendants' Exhibit C-U?

A. I would say there was no document attached.

Q. You have a present recollection that there was not? A. Yes.

The Court: He just answered that.

Mr. Diether: Very well.

The Court: While we are on that subject, do you recall [1173] the date that Exhibit 40-4, what are designated blank but unexecuted bills of lading, do you recall the date they were made out?

(Testimony of James E. Sweeney.)

The Witness: It would be——

The Court: Incidentally, we will give these a number, Mr. Clerk. We have given the first document No. 40-4-A, and these attached to that will be 40-4-B—are these carbons?

The Witness: This is a master.

The Court: Very well. And 40-4-C.

(The documents referred to were marked Plaintiff's Exhibits Nos. 40-4-B and 40-4-C for identification.)

The Court: And here is another one. That will be 40-4-D.

(The document referred to was marked Plaintiff's Exhibit No. 40-4-D for identification.)

The Court: Do you recall the date they were made out? This 40-4-D seems to be different.

The Witness: Somebody used it——

The Court: For a form?

The Witness: ——for a sort of roughing up for another shipment. It looks like they pulled it out for that last one. The date I would say would be about July 30 or July 31.

The Court: That 40-4-B and C and D, which appears to be the original—or is it?

The Witness: Yes. [1174]

The Court: No, it is not. I don't know. There are a lot of things on it that are not on the other.

The Witness: I can explain. There is what is known as ditto carbon——



(Testimony of James E. Sweeney.)

Mr. Bunn: Louder, please.

The Witness: There is the original and the ditto carbon is placed over this so it can be run off on a gelatin roll and we can get about 20 or 30 copies.

The Court: I see.

Mr. Hubert Morrow: Your Honor, I am not up there. What is that document, 40-4-B?

The Court: 40-4 was the document identified this morning as proposed bills of lading that were unexecuted which the witness testified while identifying the documents that they were never executed and therefor never used. And attached to it is this what is now 40-4-A, an order to Matson Navigation Company, which is the defendant bank's Exhibit C-U.

Mr. Diether: Yes. We will offer that at this time as defendant bank's Exhibit next in order.

The Court: Admitted. That will be C-U in evidence.

(The document previously marked Defendant's Exhibit C-U was received in evidence.)

Q. (By Mr. Diether): Was it first contemplated that you would ship the [1175] 2825 rolls of wire to South America?

A. That would be the first shipment.

Q. Later——

The Court: I wonder if I might interrupt you, counsel, while we are on this.

I understood the witness to testify this morning that these documents relating to 40-4 were incorrect.

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: And that you had issued a release order as well as these proposed bills of lading but they were incorrect. What was wrong? What happened?

The Witness: What happened was that when Mr. Londono went over to the Moore-McCormack Dock on the first delivery, which would be July 31st to Moore-McCormack, and discovered that the merchandise wasn't what he wanted, it was then that he stopped the shipment so we had to revise all the papers.

Q. (By Mr. Diether): When you eventually shipped, you shipped more than you originally first contemplated?

A. Whatever the figures were, yes.

The Court: Let me see if I understand you correctly. In sequence, you issued this release order, those proposed bills of lading, went to the dock with Mr. Londono, he saw the wire and said, "Don't ship it to Colombia," came back to your office the next day, August 1st, and dictated the letter [1176] which has been identified here to Dulien?

The Witness: Yes.

The Court: Did you thereafter write a letter to M & M Transfer Company?

The Witness: We reissued the instructions.

The Court: On what date, do you remember?

The Witness: When we resumed taking delivery. I don't know the date.

The Court: If I understand you correctly, you did not attach to this document, C-U, of which

(Testimony of James E. Sweeney.)

40-4-A is a carbon, the original bill of lading, LA-29, or any bill of lading.

The Witness: No.

The Court: Or any other document?

The Witness: No.

The Court: Very well.

Q. (By Mr. Diether): You mentioned the fact that you had made out delivery orders on July 29, 1946, to M & M Transfer. Can you point out in Mattoon's file where those could be found?

A. You have it.

Q. This is to Matson?

A. It authorizes M & M to pick it up.

Q. You didn't write direct then to M & M Transfer?

A. No, we called them.

Q. In other words, your instructions to M & M Transfer [1177] were verbal?

A. On the first shipment, yes.

Q. On July 30, which was Tuesday, did you see Mr. Londono?

A. I don't remember.

Q. You talked to him on the telephone?

A. I don't remember that.

Q. Did you talk to anyone in the bank?

A. Yes.

Q. Who?

A. Mr. Powers and Mr. Schroeder.

Q. Did you talk to both of them.

A. Both.

Q. What time of day did they call you?

A. My recollection is that it was the afternoon.

Q. Who did you talk to first?



(Testimony of James E. Sweeney.)

A. Mr. Powers.

Q. What did he say?

The Court: Powers called you?

The Witness: Yes.

He stated that the bank wanted to reissue the instructions they had issued to us the day before.

Q. (By Mr. Diether): Reissue the instructions?

A. Yes. And could we get the original letter and the [1178] document transmitted with it back to the bank as soon as possible.

And as I explained the other day, either on the same phone call or a later one, Mr. Schroeder also talked to me regarding it and said that in order to cover the bank's position better they did want to reissue the instructions.

The Court: Did you ask him why?

The Witness: No.

Q. (By Mr. Diether): Was there any mention made of any document?

A. Well, merely that they wanted to get the original letter and the document transmitted back.

Q. Did he mention what the document was?

A. I don't recall what it was called over the phone.

The Court: Had you before that time issued C-U, that delivery order, before you got this call?

The Witness: Yes.

The Court: Before the call from Powers?

The Witness: Yes.

The Court: You had issued that?

The Witness: Yes.

(Testimony of James E. Sweeney.)

Q. (By Mr. Diether): And was any mention made of a bill of lading?

A. I don't recall specifically. It was to bring the letter and the bill of lading or freight bill, as it now is, [1179] back to the bank.

Q. Did you tell him at that time that you didn't receive a bill of lading? A. No.

Q. Was any mention made on your part that you had not received a bill of lading? A. No.

Q. Was that all the conversation you had on the 30th with Mr. Powers?

A. That was all. They wanted it back in a hurry and it was impossible for me to get it back that day. I said I would come in in the morning, and I did, the following morning, the 31st.

Q. Was there any discussion with regard to why they wanted to get the document back for endorsement?

A. No. "Endorsement" wasn't mentioned then.

Q. It wasn't mentioned at all? A. No.

Q. At that time had you received a letter from Dulien—

Mr. Clerk, let me see Exhibit 41.

(The document referred to was passed to counsel.)

Q. (By Mr. Diether): Had you received Plaintiff's Exhibit 41 at that time? [1180]

A. (Examining document.)

Q. That is on July 30th, at the time you talked to Mr. Powers and Mr. Schroeder.

(Testimony of James E. Sweeney.)

A. I don't remember whether I received it on the 30th or the 31st. It is dated the 29th. If it was mailed we could assume we had it on the 30th.

Mr. Bunn: I move to strike beginning with, "It is dated the 29th," because he proceeds to give a conclusion and it is not responsive to the question.

The Court: It may be stricken.

Q. (By Mr. Diether): Did you mention that fact to Mr. Schroeder, that you had that letter?

A. No.

Q. Or to Mr. Powers? A. No.

The Court: You are speaking now of the letter of July 29th?

Mr. Diether: July 29th from Dulien to Mattoon.

The Court: Very well. I remember it.

Q. (By Mr. Diether): Did you talk to anyone from the Matson Navigation Company on the 30th?

A. Not that I recall.

Q. Did you talk to anyone from Dulien's [1181] office? A. No.

Q. Did you go to the dock on the 30th?

A. No.

Q. Were you present when the wire was taken from the dock by M & M Transfer?

Mr. Bunn: What wire? I object to the question as indefinite.

Mr. Diether: The first wire for Mr. Londono.

Mr. Bunn: I still object to the question as uncertain and indefinite.

The Court: Objection sustained.



(Testimony of James E. Sweeney.)

Were you present when any wire was taken by M & M Transfer pursuant to an order written by you?

The Witness: Yes.

Q. (By Mr. Diether): Were you there when the first wire was taken? A. Yes, part of it.

Q. When was that?

A. That would be the 31st.

Q. Were you there prior to the time any wire had been taken from the dock by M & M Transfer?

A. Yes.

Q. What time of the day was that?

The Court: What time of what day?

Mr. Diether: July 31st he said he was there.

Mr. Bunn: He didn't say it in answer to that question.

The Court: No, you asked him if he was there prior to that time. He may have been there 15 years ago.

Mr. Diether: I misunderstood him, then.

Q. Did you say that you were there when the first wire was taken, and that was July 31st, or was it prior to July 31st?

The Court: He testified that he was there when the first wire was taken by M. & M. Transfer Company pursuant to orders from Mattoon & Company. Your next question was whether he was there prior to that date. You mean on the same day?

Mr. Diether: No, I want to know what day it was that he was there.

The Court: He said July 31st.

(Testimony of James E. Sweeney.)

The Witness: That was the day that M. & M. was removing the wire.

The Court: And you were there?

The Witness: Yes.

Q. (By Mr. Diether): At what time of day was it? A. Afternoon, about 3:00 o'clock.

Q. That was after you had left Dulien's office?

A. Yes.

Q. And no wire at that time had been moved from Pier A to Moore-McCormack dock up to that time? [1183]

A. Oh, yes, they had been working on it all day, the 31st.

Q. That is what I want to know. But you weren't there until the end of the 31st. In other words, some wire had moved prior to the time you arrived there at 3:00 o'clock in the afternoon of July 31st? A. Right.

Q. Had any documents been presented to Matson Navigation Company to permit the removal of that wire other than that delivery order which you previously identified?

Mr. Bunn: By whom?

Mr. John Morrow: I object to the question as indefinite. Anything presented to someone else it is presumed that he wouldn't know about it.

The Court: Objection sustained.

Q. (By Mr. Diether): Did you deliver to Matson Navigation Company any other document other

(Testimony of James E. Sweeney.)

than the delivery order, which is Defendant's Exhibit C-U?

A. No.

Q. Or to Transmarine?

The Court: At any time?

The Witness: No, at no time.

Q. (By Mr. Diether): You met Mr. Londono on the morning of July 31, [1184] 1946, did you not?

A. He came to Mattoon's office.

Q. What time of day was that?

A. In the morning, around 10:00, 10:30.

Q. Did you show him any documents that you had received from the bank?

A. He knew that I had received these——

The Court: No, did you show him any?

The Witness: Specifically, no.

Q. (By Mr. Diether): Did you discuss with him any document that you had received?

A. Yes.

Q. What documents did you tell him you had received?

A. The letter and the freight bill that was to be returned.

Q. Did you tell him it was a freight bill?

A. I didn't point it out to him.

Q. Did you show it to him?

A. I don't remember whether he saw it then or not.

Q. Did you show him the letter?

A. I don't remember that either.

Q. Did he ask to see the documents that you had received?



(Testimony of James E. Sweeney.)

A. I don't remember that he asked to [1185] see it.

Q. Did you tell him the discussion that you had had with Mr. Powers and Mr. Schroeder?

A. Yes, I told him, and told him why we were returning it.

The Court: What did you say as to why you were returning it?

The Witness: That the bank wanted to reissue the instructions in order to give themselves more protection.

Q. (By Mr. Diether): Did you say what protection? A. No.

Q. Did you hand the documents then to him to take to the bank? A. No.

Q. Did you have possession of them when you left Mattoon's office? A. Yes.

Q. Did you advise him that you had already given instructions to pick up the wire on Pier A?

A. He knew it. I don't know that I advised him then.

Q. But you knew it at that time?

A. I am sure he did.

Q. Did you advise him at that time that you had any space reservations for shipment of the wire to South America?

A. He knew that too at the time. [1186]

Q. At that time? A. Yes.

Q. Did he give any instructions at that time in addition to those that he had already given you?

A. No.

(Testimony of James E. Sweeney.)

Q. Anything said about picking out the best 2000 tons of the 2300-ton shipment? A. No.

Q. Anything about rejecting any wire for excessive weathering? A. No.

Q. Anything about separating out the galvanized and the black?

A. Not that I remember.

Q. Have you told us all the discussion you had with Mr. Londono at your office?

Mr. Bunn: Prior to going to the bank?

Mr. Diether: Prior to going to the bank.

The Witness: There was very little discussion. He came in at that time and it was necessary to get to the bank promptly, and we talked very little about it. It was just a brief mention of what we had to do when we went to the bank.

Q. (By Mr. Diether): Did you know at the time that you were at your office with Mr. Londono that you were going to the Harbor that [1187] day?

The Court: You mean in the morning before he went to the bank did he know he was going to the Harbor?

Mr. Diether: Yes.

Q. Was it your plan, had you prearranged that with Mr. Londono?

A. No, it was not prearranged.

Q. When did you decide to go to the Harbor?

A. When it became necessary to go to Dulien Steel for that endorsement.

Q. That was the time when you decided to go to the Harbor? A. Yes.

(Testimony of James E. Sweeney.)

Q. What time did you arrive at the bank with Mr. Londono?      A. About 11 o'clock.

Q. Who did you first see?

A. Mr. Schroeder and Mr. Powers.

Q. Where did you see Mr. Schroeder first?

A. In the foreign department.

Q. What place in the foreign department?

A. In his office.

Q. Was he sitting at the desk or at the counter?

A. I don't remember.

Q. What was first said between you and Mr. Londono and [1188] Mr. Schroeder?

A. Well, my recollection is that we merely went in, said "Good morning, here are the papers."

Q. What papers did you say?

A. The papers that you phoned for. We could put it that way.

Q. Were they open or in an envelope or how did you present them?

A. They were carried in my pocket and handed to either Mr. Schroeder or Mr. Powers. I don't recall.

Q. What did Mr. Schroeder say?

A. He accepted them and——

The Court: Did he say "Good morning"?

The Witness: I assume he did.

He accepted them and issued some instructions to Mr. Powers to which I didn't pay any attention.

Q. (By Mr. Diether): Was there any discussion between Mr. Londono and Mr. Schroeder about these documents?      A. None that I remember.



(Testimony of James E. Sweeney.)

Q. Was there any discussion between you and Mr. Londono about these documents in Mr. Schroeder's presence?

A. No. [1189]

\* \* \*

Q. Did Mr. Schroeder say what additional instructions he wished to give you at the time you returned the letter and the freight bill?

A. He mentioned the insurance coverage for the time that the freight was on the dock and until it was loaded out on a ship.

Q. Was that the only thing he said?

A. That was the main portion of what he mentioned to me.

Q. Did he give you any new instructions then?

A. Written or verbal?

Q. Either one.

A. Well, Mr. Powers set about to re-issue that letter of the 29th. [1190]

Q. He did what? I didn't hear what you said.

A. I say Mr. Powers, as far as I know, set about to re-issue the instructions of the 29th.

Q. You mean the letter of July 29th?

A. Yes.

Q. Did he tell you that? What did he say?

A. He didn't tell me.

Q. How did you know that?

A. I assumed it.

The Court: Did you see him doing something?

The Witness: No, I didn't. I saw him listen to

(Testimony of James E. Sweeney.)

Mr. Schroeder and take the letter, and I don't remember whether he took the release or not.

Q. (By Mr. Diether): What do you mean the release, the freight bill?

A. Yes, into another part of the foreign department.

The Court: Then he came back with another letter?

The Witness: Well, he didn't while we were there.

The Court: But you later saw one?

The Witness: Yes.

Q. (By Mr. Diether): You don't know whether the freight bill ever left your hands?

A. It did in the bank.

Q. Did you give it to Mr. Powers or Mr. Schroeder? [1191]

A. Well, Mr. Schroeder I believe had it most of the time because when we went downstairs to the note department and spent time there with further letters and arrangements and the conclusion of that was the presentation of that letter of the 31st instructing us how to consign the barbed wire.

Q. Did you have any more discussion with Mr. Powers or Mr. Schroeder up in the foreign department? A. No.

Q. Nothing else?

A. Nothing that I remember.

Q. I show you Defendants' Exhibit C-F, which is a letter from the bank to Mr. Londono——

The Court: For identification?

(Testimony of James E. Sweeney.)

Mr. Diether: It is in evidence.

Q. —and ask you if that is what was presented to Mr. Londono in your presence.

A. If it was, I didn't see the letter.

Q. Did you hear any discussion about it?

A. Yes.

Q. What discussion took place?

A. The only discussion I can remember is that they were making the arrangements for this loan and it was of no interest to me so I didn't listen.

Q. Did you have any discussion with Mr. Londono about [1192] whether you had received any of the documents which are referred to in that letter?

The Court: Let me hear that question again.

(The question referred to was read by the reporter as follows: "Q. Did you have any discussion with Mr. Londono about whether you had received any of the documents which is referred to in that letter?"')

The Court: You mean whether or not Mattoon and Company had received any?

Mr. Diether: That is correct.

The Witness: No.

Q. (By Mr. Diether): Did you see Mr. Londono sign that letter?

A. Not that I remember.

The Court: Let me see it.

(The document referred to was passed to the Court.)



(Testimony of James E. Sweeney.)

Q. (By Mr. Diether): Whereabouts did you see that letter? Was it in the foreign department or after you got down to the note department?

A. This is the first time I have seen it.

Q. You never saw it before? A. No.

Q. Or did you ever see the original of it? [1193]

A. No.

Q. You did not see the freight bill again until you got down to the note department, is that correct? A. Yes, that is right.

Q. Who handed it to you there?

A. Mr. Schroeder.

Q. What did he say?

A. He wanted me to sign the letter receipting for those instructions regarding the consigning of the barbed wire and handed the freight bill, instructing me to get it endorsed by Dulien Steel.

Q. What did he say about getting the endorsement by Dulien Steel?

A. Well, they were verbal instructions.

Q. Did he hand you the document?

Mr. Bunn: Let him testify as to what Mr. Schroeder said.

Q. (By Mr. Diether): All right. Tell us what he said.

A. I don't remember his exact words. It was merely to get the endorsement which came out in what is now on the back of the freight bill.

Q. Did he hand you the document and say, "Get this endorsed"?

A. Yes, in that way I assume. [1194]

(Testimony of James E. Sweeney.)

Q. He handed you the freight bill?

A. Yes.

Q. And said, "Get an endorsement on"—did he call it a bill of lading?

A. I don't remember what he called it.

Q. Did you tell him it was not a bill of lading?

A. No.

Q. Was there any reference to the fact that it was a freight bill?

A. There was no reference to what kind of a document it was other than the release document.

Q. Did he tell you what kind of an endorsement he wanted you to get?

A. In substance what now appears on the back of it. I don't remember the words.

Q. Was that before or after he had handed you these new instructions?

A. We will say at the same time.

The Court: It was on July 31st?

The Witness: Yes.

Q. (By Mr. Diether): And the instructions you refer to are Plaintiff's Exhibit 11?

A. (Examining document.)

Mr. Bunn: Is that the letter dated July [1195] 31?

Mr. Diether: I should say that is the letter from Mr. Londono to the bank.

The Witness: This letter doesn't mean anything.

Q. (By Mr. Diether): Did you see that letter before it was signed by Mr. Londono?

(Testimony of James E. Sweeney.)

The Court: That letter?

Mr. Diether: Which is Plaintiff's Exhibit 11.

The Witness: No.

Q. (By Mr. Diether): When did you first see it? A. No.

Q. You had never seen it before?

A. No.

Q. Are the instructions you refer to then Plaintiff's Exhibit 16-A? A. Yes.

Q. When that document, Plaintiff's Exhibit 16-A, was handed to you, he also handed to you the freight bill? A. That is right.

Q. And that was down in the note department?

A. Yes, sir.

Q. And at the same time you acknowledged receipt of the original of Defendants' Exhibit C-E on defendant Bank's Exhibit C-E-1? [1196]

The Court: C-E, what is that?

Mr. Diether: C-E-1 is the letter from the bank to Mattoon of July 31.

Mr. Bunn: Bearing that date?

Mr. Diether: That is right.

The Witness: Yes, I acknowledged receipt.

Q. (By Mr. Diether): And the original was handed to you right in the bank? A. Yes, sir.

Q. And you gave this carbon copy to Mr. Schroeder at that time? A. Yes.

Q. Were any additional documents handed to you by the bank at that time? A. That is all.

Q. Was Mr. Londono within hearing of Mr.



(Testimony of James E. Sweeney.)

Schroeder's instructions to you with respect to getting an endorsement on the freight bill?

A. Yes.

Q. Did Mr. Londono see the document?

A. Yes.

The Court: Which document?

Mr. Diether: Plaintiff's Exhibit 7, which is the freight bill. [1197]

The Witness: Yes.

Q. (By Mr. Diether): Did you have any discussion about it?

A. None other than the endorsement.

Q. Who took Plaintiff's Exhibit 7, which is the freight bill, from Mr. Schroeder?

A. Either myself or Mr. Londono. We were going together. It was my responsibility. I signed for it.

Q. You signed for the freight bill?

A. Yes.

Q. Where did you sign for the freight bill?

A. In the note department.

Q. Where did you sign in the note department for the freight bill?

A. I just got through explaining the steps in the receipt of it, and that was where we were instructed to have the endorsement on the back of it. That is what I have been talking about all the time.

Q. You said you acknowledged receipt of the freight bill in the foreign department on what document?

(Testimony of James E. Sweeney.)

The Court: He said in the note department.

Mr. Diether: That is right, in the note department.

Q. What document did you acknowledge receipt of the freight bill?

A. It was that letter of the 31st. [1198]

Q. This one?

A. Well, not a receipt. It is with further reference and it was handed back but it wasn't transmitted on this one.

Q. You are referring to the paragraph which reads, "With further reference to our letter of July 29 enclosing Matson Navigation Company's bill of lading LA-29 covering 4,599,948 pounds of barbed wire. We hereby request that from the above lot you segregate 2,000 tons of the best quality and the balance"——

The Court: We have all read the letter a dozen times, counsel. Let us proceed.

The Witness: Maybe I shouldn't have said acknowledged receipt of. It was turned over with instructions to get the endorsement, which were verbal. So inasmuch as the bank had placed Mattoon in the position of being responsible for the return of the original shipping documents, we were also responsible for that freight bill and obtaining the endorsement. As to who took it, Mr. Londono or myself, I don't remember.

Q. (By Mr. Diether): With reference to this first paragraph, it refers to "our letter," the bank's

(Testimony of James E. Sweeney.)

letter, of July 29th. Did you have a letter from the bank of July 29th at that time?

A. Not at that time, no. [1199]

Q. You did not? A. No.

Q. Yet you acknowledged receipt of this letter.

The letter instructs you to pick out the best 2,000 tons of the 2300-ton shipment. Is that the first instructions you had received to segregate the best 2,000 tons of the 2300-ton shipment?

A. Yes.

Q. Did you give any new or different instructions to Matson Navigation Company or to M. & M. Transfer after you received those instructions from the bank?

A. Well, the trip to the Harbor took care of that. That was when it was discovered that it wasn't what it was supposed to be.

Q. Did you ever give any instructions to Matson or to Transmarine or M. & M. Transfer with respect to picking out the best 2,000 tons of the 2300 ton shipment? A. No.

The Court: Did you ever make a request to Matson to be permitted to pick out the best 2,000 tons of any 2300 ton shipment, or make a request to select the wire of any kind?

The Witness: It wasn't necessary.

The Court: Did you?

The Witness: No.

Q. (By Mr. Diether): Did you at any time receive any [1200] instructions from Mr. Londono



(Testimony of James E. Sweeney.)

to reject any of the wire for excessive weathering?

A. No.

Q. Have you given us now all the conversation that you had at the bank on July 31 when Mr. Londono and yourself were there?

A. All that I can remember.

Q. Did you talk to any other officers of the bank on July 31 by telephone after you had gone down to Dulien? A. No.

Q. Or after you had returned from the Harbor that day? A. No.

Q. What time did you arrive at Dulien's office?  
The Court: When?

Mr. Diether: On July 31st.

The Witness: Oh, approximately 1:30, 2:00 o'clock.

Q. (By Mr. Diether): Who did you see first?

A. Mr. Grinstein.

Q. What conversation took place?

A. Well, the conversation that took place was initially the endorsement on the back of the freight bill.

Q. What did you say and what did he say?

A. I don't remember. [1201]

Q. Did you say this was a freight bill, we want it endorsed?

A. I wasn't the first one to talk.

Q. Who talked first?

A. There were three of us and I don't remember who talked first. There was the usual salutations and we stated our business, and I don't recall

(Testimony of James E. Sweeney.)

which one of the three of us, Mr. Rendon, Mr. Londono, or myself brought up the matter.

Q. You have no recollection of what was said?

A. It was merely—whoever made the statement—was to have the endorsement put on the back of the freight bill, and that was immediately complied with, and we had the wording so set up in our minds at that time so that it met with the approval of all.

Q. Did you tell Mr. Grinstein that you were handing him the freight bill and you wanted an endorsement on it?

A. I don't remember the words we used on that document.

Q. Did you tell that to Mr. Stanley?

A. Tell what, that it was a bill of lading?

Q. That it was a freight bill you wanted endorsed?

A. No, I don't remember the words we used on it.

Q. Did you look at the endorsement after it was put on the back? [1202]      A. Yes.

Q. Did you observe that it said bill of lading?

A. I didn't notice.

Q. You didn't read it?

A. I noticed in substance it had the necessary wording that we needed or that the bank had instructed us to get. It was signed by Mr. Stanley, I saw Mr. Stanley sign it, and that was it.

Q. Did you tell anybody that it wasn't a bill of lading when you were there?      A. No.

(Testimony of James E. Sweeney.)

Q. Who took it after it was signed by Mr. Stanley?

A. I picked it up from him. I don't know whether I carried it back to Los Angeles or whether Mr. Londono did.

Q. Then what happened to it after you got back to Los Angeles?

A. Then it reposed in Mattoon's file.

Q. How long did it remain there?

A. Perhaps two or three weeks.

Q. Do you know when it was removed?

A. I don't know the day, but I remember that Mr. Londono had it.

Q. Did you take it out and give it to him?

A. I don't remember whether I took it out or whether he did. [1203]

Q. Did you have any discussion about it at any time?

A. The discussion that I recall, he came to me one day, morning or afternoon I don't remember, and showed me the document and he said, "Is this a bill of lading," and I said, "No."

Q. What did you say? A. I said, "No."

Q. What did he say?

A. He apparently had been discussing the matter with Mr. Bunn because he departed with the document then.

Q. That is the last that it was ever in Mattoon and Company's file? A. That is right.

Q. You haven't seen it since that time until you came here in Court?



(Testimony of James E. Sweeney.)

A. I believe I saw it in Mr. Bunn's office once or twice.

Q. You went on down to the harbor then immediately after you left Dulien's office, didn't you?

A. Yes.

Q. And how much wire had been removed from the boat at that time?

A. From the ship?

Q. From the ship. [1204]

A. I can't tell you.

Q. Did you have the freight bill and the turnover letter with you when you went to the dock on Pier A on July 31st?

Mr. Bunn: What does counsel refer to by the "turnover letter"?

Mr. Diether: The letter from Dulien to Mattoon and Company dated July 29.

Mr. Bunn: The letter from who?

Mr. Diether: Dulien to Mattoon and Company dated July 29.

The Court: Did you have that letter with you on July 31st?

The Witness: No.

Q. (By Mr. Diether): You didn't have it?

A. No.

Q. You didn't have that letter with you at all?

A. No.

Q. Did you exhibit the freight bill to anyone on the dock?

A. I don't remember that I did.

The Court: Did you have a conversation at the

(Testimony of James E. Sweeney.)

dock on that day with Mr. Londono concerning the wire, the quality of it? [1205]

The Witness: The afternoon of the 31st, yes.

The Court: What did he say to you?

The Witness: Well, more and more was being discharged and obviously the quality wasn't good.

The Court: No, what did he say to you? Just what did he say to you?

The Witness: In substance, he didn't like the looks of the percentage of the bad wire.

The Court: Did he say anything to you about shipping the wire?

The Witness: Well, no.

The Court: He did not order you not to ship it?

The Witness: No, not until we got to Moore-McCormack which was in another part of the harbor.

The Court: What did he say then?

The Witness: Don't ship any.

The Court: Don't ship any wire?

The Witness: That is right.

The Court: What else?

The Witness: Well, we arranged to send——

The Court: Did he say anything as to why not to?

The Witness: The quality was bad.

The Court: Is that what he said?

The Witness: Yes, he said the quality isn't good and he wouldn't ship it to his customers in Colombia in that [1206] condition.

(Testimony of James E. Sweeney.)

The Court: By the way, do you speak Spanish?

The Witness: No.

The Court: He spoke to you in English?

The Witness: Yes.

The Court: And you to him in English?

The Witness: Right.

The Court: And you understood him?

The Witness: Some Spanish, yes, and all English.

Q. (By Mr. Diether): When you went to Pier A on July 31, was that the first time you had seen the wire that was being discharged from the White Squall? A. No.

Q. Did you see it prior to that time?

A. I don't remember. It was whenever they first opened up the ship, and I don't remember the day.

Q. How many days prior to the 31st had you seen the wire?

A. If I knew the day they started discharging the ship, I could tell you.

Q. Suppose it was on Sunday, what day after that?

The Court: Suppose it was on Sunday?

Mr. Diether: July 28th.

The Witness: It could have been because I was there at [1207] the outset of the discharging when they first opened it up.

The Court: Where was the wire? In the hold?

The Witness: In the holds, yes.

The Court: Do you know how many tons of



(Testimony of James E. Sweeney.)

wire approximately were on the ship altogether?

The Witness: Approximately 4,000 to 4500.

The Court: Were there any other cargo in the holds?

The Witness: I don't know.

The Court: Did you see any?

The Witness: No.

The Court: How big was the ship?

The Witness: Well, that is a 10,000-ton capacity. I believe that that is all it had aboard, was barbed wire.

Q. (By Mr. Diether): Did you make any inquiry at that time when you first saw the wire as to which was Mr. Londono's wire?

A. Yes, I did.

Q. Were you able to find out? A. No.

Q. Why?

A. There was no separation of stowage in the ship.

Q. What do you mean no separation of stowage?

A. Well, the reason I went at the outset of the discharging was to find out when the portion for Mr. Londono was to come out, and the dock office, one of the gentlemen in [1208] there, said that the stowage plan didn't indicate anything and it was questionable when we were going to be able to start on the portion that was supposed to be for Mr. Londono.

The Court: Did you see the wire in the hold of the ship?

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: Were there any marks on it?

The Witness: No marks.

The Court: Identifying any segregation.

The Witness: None.

The Court: It was just wire?

The Witness: Yes.

The Court: Like a bin of wheat?

The Witness: Yes.

Q. (By Mr. Diether): Was anybody with you?

A. I don't recall who was with me on that trip.

It was necessary in order to get the stuff picked off the dock and over to the other ships so I had to go on my own time.

Q. Had you been to the dock to see the wire at any time between this first time you just described and when you were there with Mr. Londono on July 31st? A. No.

Q. Did you make any effort on July 31st, when you were there with Mr. Londono on Pier A, to identify Mr. [1209] Londono's wire?

A. Well, it was accepted at the time that the separations chalked out on the dock, Gonzalez & Blanco, and Dulien Steel, were to be followed and so there was no reason for us to ask for any separation.

Q. Did you talk to anybody from Matson at that time about the designation of Mr. Londono's wire?

A. Well, as I say, it wasn't necessary. The separations were cut out on the dock and it was assumed that that is the way it was going to be.

(Testimony of James E. Sweeney.)

The Court: Did you talk to anybody?

The Witness: No, I didn't.

Q. (By Mr. Diether): You went over to the Moore-McCormack dock after you left Pier A?

A. Yes, sir.

Q. That is some distance away, isn't it?

A. That is on Terminal Island, about five, six miles.

Q. Was the wire which you saw inside of a shed on the Moore-McCormack dock?

A. The unloaded portion was inside of the shed, and that that was on the trucks was outside the shed.

Q. How much wire was inside?

A. I don't know. [1210]

Q. Did you give directions that all the wire, both that which had been unloaded and that which was on the trucks, to be returned to Pier A?

A. No, just that that was on the trucks.

Q. Do you know whether or not it was all returned? A. I know that it wasn't.

Q. How much was returned?

A. The portion that was on the trucks.

Q. How much was it?

A. I recall two trucks, two trailers.

Q. How many rolls, how many tons?

A. I can't tell you.

Q. How do you know that that that was unloaded was not returned?

A. Because we separated part of that for the first shipment on the Mormacreed.



(Testimony of James E. Sweeney.)

Q. Did you see it yourself being separated at the Moore-McCormack docks? A. No.

Q. When did you give instructions to separate the wire that had been returned?

A. Separate the wire at Moore-McCormack?

Q. That you saw there, that you said was sent back to Pier A.

A. I still don't understand. [1211]

Q. As I understand it, Mr. Londono at that time told you not to ship that wire and you said you sent the wire outside the dock on the trucks back to Pier A; is that true? A. Yes.

Q. When did you instruct anybody to separate the wire that you sent back to Pier A?

A. You mean all the wire then, that was on the trucks and everything that was still there?

The Court: He has testified that he later instructed somebody to separate the wire that was left there, that it was not returned.

Mr. Diether: I see.

Q. You only separated——

The Court: Is that not what you are talking about, or is it something else?

Mr. Diether: Both, your Honor.

Q. Did you give instructions to separate only the wire that was in the dock and had been unloaded?

A. I gave instructions on the stuff on the Moore-McCormack dock to be separated when it was decided we were going to ship, and the good portion of that, plus the poor that we were able to deliver,

(Testimony of James E. Sweeney.)

was shipped. Then the wire at Pier A we separated it as we delivered it to other ships.

Q. What happened to the wire on the Moore-McCormack dock that was separated? [1212]

A. The good portion was shipped around the middle of August of '46, and the bad portion remained on the Moore-McCormack docks until shipped out early in '47.

Q. You mean all the wire that you then separated out remained right on Moore-McCormack docks until you shipped it out in April of 1947?

A. That is right.

Q. Was any additional wire added to that?

A. Bad wire?

Q. Bad wire. A. No.

The Court: How much longer do you think you will be on cross-examination?

Mr. Diether: All the rest of the afternoon, your Honor.

The Court: And some more?

Mr. Diether: I think so, your Honor.

The Court: Tomorrow?

Mr. Diether: A portion of tomorrow.

The Court: Very well.

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 15, which is a photostatic copy of a letter, carbon copy of a letter from Mattoon and Company to M. & M. Transfer, dated July 31. Do you remember signing that letter and sending it to M. & M. Transfer? [1213]

Mr. Bunn: Does it appear to be signed, actually

(Testimony of James E. Sweeney.)

signed, or does it appear to have a carbon typing on it?

The Witness: I am sure I wrote it.

Q. (By Mr. Diether): And it was sent out in the regular course of business?

A. I assume so.

The Court: What date is that?

Mr. Diether: July 31, 1946.

Q. This last paragraph of this letter reads, "This wire must be returned to the dock at Long Beach due to a change in the shipper's plans. Please accomplish this return immediately and take no further action under delivery instructions which we issued you July 30."

Does that refresh your recollection that you ordered M. & M. Transfer to take all wire from the Moore-McCormack docks back to Pier A?

A. To take all?

Q. Of the wire that was on Moore-McCormack docks on July 31st?

A. They were not instructed to take all of it. They were instructed to take the portion that was on the trucks back, the reason being, if there was any more possibility to ship it, we could save a lot of extra expense of loading it onto the trucks and taking it back to Long Beach. [1214]

Q. What do you mean by this paragraph, "This wire must be returned to the dock at Long Beach due to change in the shipper's plans"?

A. That was the confirming of verbal instructions.



(Testimony of James E. Sweeney.)

Q. The first paragraph reads, "We enclose herewith two delivery orders covering barbed wire which you picked up for our account yesterday at Pier A, Long Beach." It doesn't say anything about that which was only unloaded.

A. That was confirmation of verbal instructions.

Q. That letter was sent in the regular course of business?      A. I believe so.

Mr. Diether: May this be received as defendant Bank's next exhibit in order?

The Court: Is it not in evidence already?

Mr. Diether: No, it is not.

The Court: Plaintiff's Exhibit 15 for identification will be Bank's Exhibit C-V in evidence.

(The document referred to was received in evidence and marked Defendant Bank's Exhibit C-V.) [1215]

\* \* \*

Q. Did you at any time see the wire which had been delivered to the Moore-McCormack dock on July 31 being separated?      A. No.

Q. How do you know it was separated?

A. I ordered it.

Q. Is that the only way you know?

A. There are invoices in there for separation which I could probably dig out to support it. [1216]

\* \* \*

The Court: Here is Exhibit 39? Is that the document you refer to?

The Witness: Yes. And my memory is also on

(Testimony of James E. Sweeney.)

that Exhibit 38-1, that Mormacreed, it might be in there.

Mr. Diether: I am speaking now about the separation that took place for the Mormacreed.

The Court: That is bills that he paid?

Mr. Diether: Right.

The Court: Who did you have do the work?

The Witness: I don't recall as to that. It would appear on Mattoon's invoice there.

Mr. Bunn: The one the court has? [1217]

The Witness: Yes.

(The exhibit referred to was passed to the witness.)

The Witness: Here is your drayage and segregation, \$958.26. That covers both drayage and segregation.

The Court: You are reading an item now from what document?

The Witness: From Mattoon and Company's invoice of August 19.

The Court: To whom?

The Witness: To J. B. Londono.

The Court: That is the separation and drayage?

The Witness: Segregation, as it is termed.

The Court: Segregation and drayage?

The Witness: Yes.

The Court: Did you have an invoice from M. & M.?

The Witness: Yes, that would have been from M. & M.

(Testimony of James E. Sweeney.)

The Court: Do you have that invoice in the file?

The Witness: I will have to look.

Mr. Diether: I call the court's attention to the summary, which is Exhibit 39 prepared by the witness, and it says Mormacreed, sorting labor, \$507.38. There is no such item on the document which the witness——

The Witness: Excuse me. I can explain that without much trouble. Our \$507.38 is the segregation portion of the freight. [1218]

The Court: Have you your segregation bills in there?

The Witness: There is freight bills in here from M. & M. Transfer combining the drayage and the segregation, and it is itemized and the tape has been run on it so it can be proven.

Q. (By Mr. Diether): Can you find it?

A. Right in here. They are all in here.

The Court: All in No. 39?

The Witness: Yes, they are all in 39 under these M. & M. freight bills, and if it is split up you will find that that is the reason.

The Court: In other words, here is what appears to be an invoice, Mattoon and Company, 8-1-46, one truck, tractor and semi-trailer to haul, four hours, one swamper, 8 hours.

The next one is three swampers. Is that what you call the swamper, the one who segregates it?

The Witness: Well, that is what they call them.

The Court: Here is another item, 8-9-46, six men to unload truck and segregate, 7 hours each.



(Testimony of James E. Sweeney.)

The Witness: Yes.

The Court: Another one, 8-9-46, six swampers to load and unload truck and segregate.

The Witness: Yes.

The Court: And five men, 8-9-46, to unload and segregate. [1219] Then another one, 8-9-46, five men.

In other words, the segregation bills are included in this 39-II.

The Witness: There was a tape this morning attached to it totaling this \$507.38 and the balance is drayage.

The Court: In other words, the way you got that figure was to go through those bills and analyze them and take out the segregation from the trucking?

The Witness: Yes.

Q. (By Mr. Diether): Is there anything on those bills to show whether that segregation was on Pier A or the Moore-McCormack dock?

A. No. In most instances, it is to haul as directed, segregate as directed.

Q. Those instructions were given verbally to M. & M. Transfer?

A. Let's take a look at the delivery orders. (Examining exhibit.) Verbal.

The Court: You were taking a look at what? You said, let's take a look. At what?

Mr. Bunn: Delivery orders.

The Witness: At the shipping documents for the Mormacreed so I could see if we did issue them verbal or in writing.

(Testimony of James E. Sweeney.)

The Court: In other words, there being an absence of [1220] written instructions, you conclude it was verbal?

The Witness: Yes.

Q. (By Mr. Diether): Do you know on what day wire was taken from Pier A for shipment on the Mormacreed?

Mr. Bunn: First, you mean?

Mr. Diether: The respective days that wire was taken from Pier A for shipment on the Mormacreed.

The Witness: It would have been late the 30th or early the 31st.

Q. (By Mr. Diether): And continued for how long?

A. As long as it took to move the 112 tons which finally moved.

Q. Do you know when that was completed?

A. No.

Q. Did Mr. Londono overhear your instructions to M. & M. Transfer relative to the removal of wire from Pier A?

The Court: How does he know?

Mr. Diether: Was Mr. Londono with him when he gave them?

The Witness: I don't know that he overheard me.

Q. (By Mr. Diether): You don't know whether he did or not? A. No. [1221]

Q. This insurance policy referred to, Exhibit 39-F, when was that prepared?

(Testimony of James E. Sweeney.)

A. It was prepared in the insurance office of the issuing insurance company.

Q. Pursuant to telephone instructions from you?

A. From phone instructions from our office.

Q. When were those given?

A. I believe August 1st.

Q. This policy is dated July 31st.

A. Yes, we had open policy privileges with the insurance company wherein they would back-date wherever we needed it.

Q. You think this policy was back-dated?

A. I am sure it was.

Q. Did you give the instructions to the insurance company personally?

A. I don't remember that I did or whether one of the people in the office did.

Q. Is there anything on that policy that indicates that the Citizens Bank was a co-beneficiary?

The Court: It speaks for itself, counsel. Let us get on.

Do you remember talking to the insurance company about it at all?

The Witness: No. I do later because they invoiced it. [1222]

The Court: It invoiced it to whom?

The Witness: To Mattoon.

The Court: And what did you do about that?

The Witness: Set about to invoice Londono for the premium cost, and it was incorrect, so I phoned them.

The Court: You phoned the insurance company?



(Testimony of James E. Sweeney.)

The Witness: Yes.

The Court: Did they re-invoice it, or do you know?

The Witness: Yes, they re-invoiced it.

The Court: To whom?

The Witness: To Mattoon.

The Court: For the account of—

The Witness: Londono.

The Court: —Londono?

The Witness: Yes.

The Court: Or for the account of the bank?

The Witness: It is for the account of Londono.

Q. (By Mr. Diether): When did Mr. Londono again give you instructions to ship the wire to South America after he told you not to ship it on July 31st?      A. On August 1st or 2nd.

Q. He told you to go ahead and ship—what did he tell you at that time?

A. Well, he reconsidered and had obtained from us the [1223] approximate segregation costs and decided to segregate all the goods he possibly could and proceed with the shipment.

The Court: Of all of it?

The Witness: I don't know what his intentions were at the time.

Q. (By Mr. Diether): What did he tell you?

A. Take the best we could find, as much of it as possible.

Q. And ship, continue to ship pursuant to the bank's instructions?      A. Yes.

Q. Of July 31st?      A. Yes.

(Testimony of James E. Sweeney.)

Q. And you ordered the segregation of the wire that remained on Pier A, is that right?

A. As it was picked up and delivered it was segregated. That was the orders.

Q. And was M. & M. Transfer doing that you for you?

A. They did on the Moore-McCormack ships and Marine Terminals I believe on the Grace Line ships.

Q. Was any inventory made of the wire which was set aside or segregated out as too bad to ship?

A. No. [1224]

Q. Where was it placed on the dock with respect to the other wire?

A. Well, the procedure was to keep moving it by a process of elimination, just move over the bad stuff and take out the good, and then when you got as much of one grade you just kept moving it until it was real bad.

Q. Was there any segregation of the very rusty wire out from the other then?

A. It was impossible.

Q. Why was it impossible?

A. From the labor angle. There wasn't room to spread it. It was hard to get labor to work the stuff. It was very difficult to work.

Q. By segregation then you mean just a process of continuing to select the best wire?

A. Selecting the best available.

The Court: In the matter of the labor, did it require hand-handling of the rolls?

The Witness: Hand labor on all of it.

(Testimony of James E. Sweeney.)

The Court: How did they pick them up?

The Witness: With gloves. They had to buy special equipment and special covering for their legs.

Q. (By Mr. Diether): Then the quantity of wire that was actually segregated out as being too rusty to ship was never actually [1225] inventoried or weighed? A. No.

Q. Did you accompany Mr. Londono to Mr. Grinstein's office on August 5th? A. No.

Q. Were you at the dock with Mr. Londono and Mr. Grinstein on August 5th?

A. I don't remember.

Q. When did you go to the dock again after July 31st? A. I don't remember that.

Q. You have no recollection of the next time you went? A. No, I don't.

Q. After August 5th, did Mr. Londono give you any new instructions with respect to shipping the wire? A. No.

Q. Or with regard to segregation? A. No.

Q. Would the same thing be true with respect to August 7th? A. Yes.

Q. Do you know whether or not Mr. Londono ever demanded of Dulien that he return the purchase price for the wire? [1226] A. No.

Mr. Hubert Morrow: You mean the witness doesn't know?

Q. (By Mr. Diether): You don't know?

A. I do not know.



(Testimony of James E. Sweeney.)

Q. Do you know whether or not Mr. Londono ever offered to return all the wire to Dulien?

A. I don't know.

The Court: Do you know whether or not he ever demanded the money back from the bank?

The Witness: I don't know that.

Q. (By Mr. Diether): Did you ever have any discussion with Mr. Londono with regard to the letter that he received from Dulien on August 7th?

A. I don't know the letter.

Q. That is Plaintiff's Exhibit 25.

I show you Plaintiff's Exhibit 25 and ask you if you have ever seen that document before?

A. I don't recall having seen it.

Q. And you had no discussion with Mr. Londono about it? A. No.

The Court: That is dated August 7th?

Mr. Diether: That is dated August 7th. [1227]

The Court: Were you with Mr. Londono on or about August 5th on a visit by him to Dulien Steel and a conversation with Mr. Grinstein?

The Witness: I don't remember that I was.

The Court: Were you ever present at a conversation between Mr. Londono and Dulien or Grinstein or Stanley concerning the condition of the wire and the renegotiation of the price?

The Witness: Yes, on the 31st.

Q. (By Mr. Diether): July 31st?

A. July 31st; yes.

The Court: That was when you had the freight bill down there?

(Testimony of James E. Sweeney.)

The Witness: That is right.

The Court: What happened there?

The Witness: There Mr. Rendon more or less acted as spokesman for Mr. Londono.

The Court: Was this before you went to the harbor?

The Witness: Before.

The Court: Yes?

The Witness: And he told Mr. Grinstein that Mr. Londono was a little bit concerned that the wire might not be up to specifications, and Mr. Grinstein said that there wasn't any worry on that score because Dulien was here in [1228] business to stay, and if there was any question that would come up they would discuss it and arrange any settlement that they might agree to.

Q. (By Mr. Diether): Was that all the conversation at that time?

A. That was the substance of it.

Q. Who was present at that time?

A. Mr. Grinstein, Mr. Rendon, Mr. Londono, myself.

Q. Was Mr. Stanley present? A. No.

Q. Was Mr. Dulien present? A. No.

Q. Was that the only time you were present at any conversation between Mr. Londono and any representative of Dulien relative to renegotiation of the price of the wire or the quality of the wire?

A. Yes.

Q. Did you have any telephone conversation with Mr. Powers the first week in August of 1946

(Testimony of James E. Sweeney.)

relative to the condition of the wire that was delivered to Mr. Londono?      A. None that I recall.

Q. Did this segregation of wire that you are speaking about continue each time you took delivery of wire for shipment on a vessel, the segregation just continued as you took delivery from [1229] Pier A?      A. Yes.

Q. There was no segregation except at times when you took delivery from Pier A; is that right?

A. That is right.

The Court: In other words, the idea was to go down and get 2,000 tons of the best wire?

The Witness: You could possibly get, yes.

Q. (By Mr. Diether): When did you receive instructions from Mr. Londono not to ship any further wire to South America?

The Court: Is this a new question, or is this the same question we asked this witness this morning?

Mr. Diether: No, this pertains not to the wire that was on the Moore-McCormack dock; this pertains to after he had shipped the wire.

The Court: The witness has testified that on July 31st Mr. Londono told him not to ship any wire. Now, is this subsequent to that?

Mr. Hubert Morrow: He said a day or two later he changed his instructions.

Mr. Diether: Yes, but I am not asking him after he told him to go ahead again, but when did he subsequently thereafter tell him not to ship any more?



(Testimony of James E. Sweeney.)

The Witness: I don't remember the date, but it was possibly September 7th to 15th. [1230]

Q. (By Mr. Diether): Somewhere in there?

A. Yes.

Q. What did he tell you at that time?

A. I don't remember how he issued the instructions. It was verbal, I am sure.

Q. No written instructions? A. No.

Q. This wire was segregated out on the Moore-McCormack dock. Was it allowed to remain there until April without any further action on your part?

The Court: You mean the wire that did remain until April?

Mr. Diether: Yes.

The Court: Without further action. What do you mean?

Q. (By Mr. Diether): Any further action or disposition of it on your part?

A. It was there. The steamship company wanted us to move it, but we couldn't give any disposition on it.

The Court: What are you getting at, whether or not it was put under canvas or under cover?

Mr. Diether: Yes, why was it allowed to remain on Moore-McCormack's dock from August, '46, until April, '47?

The Witness: Because of the controversy that arose. [1231] It was too bad to ship, at least at the outset, and Mr. Londono couldn't give us any instructions for shipping, so it remained on the dock.

Q. (By Mr. Diether): It remained there just

(Testimony of James E. Sweeney.)

because Mr. Londono didn't tell you anything to do with it?

Mr. Bunn: Because it was too bad to ship, he said.

The Witness: Yes, he was unable to give us any instructions. He didn't want to ship it there.

Q. (By Mr. Diether): Didn't you subsequently notify the shipping company that you were going to abandon it? A. Yes, we did.

Q. Why did you do that?

A. My recollection is that the matter was brought to Mr. Londono's attention and to the bank's attention and to Mr. Bunn's attention and no one could reach any agreement, so the steamship people—that dock space is valuable to them—they wanted a decision as to what was going to be done with that wire, and we had no alternative but to arbitrarily in the absence of instructions tell them we were going to abandon it.

Q. Did Mr. Londono tell you to abandon it?

A. No.

Q. You did that of your own volition? [1232]

A. He may have agreed. I don't remember.

The Court: He thereafter withdrew the instructions?

The Witness: That is right.

The Court: Made as to the shipment?

The Witness: Yes. And I believe it was done with the knowledge of all concerned.

Q. (By Mr. Diether): I show you Defendant Bank's Exhibit C-Q for identification. Have you seen that letter before? A. Yes.

(Testimony of James E. Sweeney.)

Q. You received that in due course on or about the date it is dated? A. Yes.

Q. And did you call that letter to Mr. Londono's attention?

Mr. Bunn: What is the date of that?

The Witness: January 29, 1947.

Q. (By Mr. Diether): Did you call that to Mr. Londono's attention?

A. I was not in Mattoon's office in Los Angeles at that time.

Q. You mean you had left prior to January, 1947?

A. I was in San Francisco with Mattoon and Company.

Q. When did you leave the Los Angeles office of [1233] Mattoon and Company?

A. Early in December, '46.

Q. And you didn't subsequently have any connection with the Los Angeles office of Mattoon and Company?

A. Yes. I knew what was going on on it, because I personally had conducted the whole transaction.

Q. Then you personally knew that that letter was received on or about the date it bears?

A. Yes, I do.

Mr. Diether: We will ask that it be offered as Defendant Bank's Exhibit next in order.

The Clerk: It is already marked.

The Court: What is it?

The Clerk: C-Q, your Honor.



(Testimony of James E. Sweeney.)

The Court: Any objection? (No response.)

Admitted.

(The document referred to was received in evidence and marked as Defendant's Exhibit C-Q.) [1234]

\* \* \*

May 3, 1950.

Mr. Diether: If the court please, I would like to introduce in evidence at this time several documents that were identified by this witness yesterday.

The first one is Plaintiff's Exhibit 40-4-B. That is the unsigned bill of lading of Moore-McCormack Lines covering 2828 rolls of barbed wire. I will ask that that be marked as defendant bank's exhibit next in order.

Mr. John Morrow: May I examine that first, Mr. Diether?

The Court: That is the unexecuted document?

Mr. Diether: That is right.

(Exhibiting document to counsel.)

Mr. Diether: Counsel calls my attention to the fact that there are three copies of this bill of lading.

Mr. Bunn: And they are different.

Mr. Diether: Attached to this group of papers, which is marked Plaintiff's Exhibit 40-4. I am not particularly interested in which one has been marked. Perhaps all three of them ought to be marked so there will be no question about it.

(Testimony of James E. Sweeney.)

Mr. Bunn: Which one are you asking the court to receive [1240] in evidence?

Mr. Diether: Let's have all three marked as Defendants' exhibit next in order so that there will be no question about them if there is any difference between them.

Mr. Bunn: I object to the introduction, first, on the ground that they are immaterial, not having been executed and acted upon; second, on the ground that there is not sufficient foundation laid for any of them, and particularly no sufficient foundation laid for 40-4-C in that there are markings on there as to which no testimony has been given.

The same is true of 40-4-D.

Mr. Diether: I am not offering the markings written on there, only the typewritten portion.

Mr. Bunn: My first two stated objections I ask the court to consider.

The Court: Let me see them .

(The documents referred to were passed to the court.)

Mr. Diether: This witness, you will recall, your Honor, testified that it was first contemplated that that quantity of wire would be shipped on the Mormacreed and those bills of lading were then made out, and it corresponds with the delivery order which was sent to Matson. Subsequently that shipment was increased from 2825 rolls to 4017 rolls. But that was the original contemplation of the

(Testimony of James E. Sweeney.)

parties as evidenced by the delivery order which was sent by Mattoon & [1241] Company to Matson and which is Defendants' Exhibit C-U.

The Court: They do not appear to be copies.

Mr. Diether: I will only offer the first one then. May the top one only be offered? That will be sufficient for my purpose.

The Court: 40-4-B will be admitted in evidence as Defendants' Exhibit C-W.

(The document referred to was received in evidence and marked Defendants' Exhibit C-W.)

Mr. Diether: The clerk's list of exhibits which he handed to counsel yesterday shows that defendant bank's Exhibit C-D was admitted in evidence, and at this time I wish to offer in evidence Defendants' Exhibit C-D1, which this witness identified yesterday as bearing his signature.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit C-D1.)

Mr. Diether: Mr. John Morrow has handed to me a carbon copy of a delivery order from Mattoon & Company to Matson dated August 22, 1946. That is the document which is referred to on our list of exhibits as Item No. 26.

Mr. Morrow informs me that they were not able to find the instructions to Koppel Bros. which is referred to in that document.



(Testimony of James E. Sweeney.)

The Court: That is marked C-M1 and [1242] C-M2.

Mr. Diether: That is right.

Mr. Bunn: May I ask, was Mr. Sweeney interrogated yesterday about this?

Mr. Diether: No, he has not been.

Mr. Bunn: You are asking for it to be marked for identification?

The Court: It is already marked for identification.

Mr. Diether: The carbons have been marked.

The Court: That will be C-M3 then.

(The document referred to was marked Defendants' Exhibit C-M3 for identification.)

### Cross-Examination

(Continued)

By Mr. Diether:

Q. I show you Defendants' Exhibit C-M3 and ask you if you have seen that document before?

A. Yes.

Q. Does it bear your signature? A. Yes.

Q. Was that prepared in the regular course of business? A. Yes.

Q. And was it sent to Matson on or about the date it is dated? A. Yes.

Mr. Bunn: To whom?

Mr. Diether: To Matson. [1243]

Q. I show you Defendants' Exhibit C-M1, which is a carbon copy of a letter apparently from Mattoon & Company to Koppel Bros., dated——

(Testimony of James E. Sweeney.)

The Court: C-M1 should be the carbon of the document you just identified. C-M2 is indicated by my notes to be the carbon copy of instructions from Mattoon to Koppel Bros.

Mr. Diether: They haven't been so marked by the clerk, your Honor. They are just the reverse.

The Court: Very well. I can change my notes.

Q. (By Mr. Diether): Referring again to Defendant Bank's Exhibit C-M1, which is the purported instructions to Koppel Bros., dated August 22, 1946, that document was taken from Mattoon & Company's file. Was that the instructions which are referred to in Defendant Bank's Exhibit C-M3?

A. (Examining document.)

The Court: Is that a copy of them?

Mr. Diether: That is right.

The Witness: Yes, that confirms it.

Q. (By Mr. Diether): This carbon is a little hard to read, due to the fact that it is a little jumpy. I wonder if you would read those instructions into the record.

A. It is addressed to Koppel Bros., dated August 22, 1946. [1244]

"Segregate barbed wire for loading to rail cars as indicated below for movement to Berth 53 Outer Harbor.

"500 tons barbed wire ex SS White Squall, bill of lading LA-29, to be segregated as follows:

"250 tons galvanized, 250 tons black, tons are short tons, badly rusted rolls to be set aside. Keep

(Testimony of James E. Sweeney.)

a tally of various weight rolls of both types so that weights will be correct. Load only very best wire, loading least amount of rusted possible. Tally if any rusted or damaged rolls loaded to the cars must be kept and signed for with exceptions noted.

“Please see that above instructions are closely adhered to.”

And it shows a copy of that to the Matson Line.

Mr. Diether: We will offer all of those in evidence, being C-M1, C-M2 and C-M3 as defendant bank's exhibit next in order.

The Court: They will not be the next in order. They are in evidence as C-M1, C-M2 and C-M3.

(The documents referred to, previously marked Defendants' Exhibits C-M1, C-M2 and C-M3 were received in evidence.)

Q. (By Mr. Diether): Do you know whether those instructions to Koppel [1245] Bros. were carried out? A. No.

Q. Are those the only written instructions that were ever given in connection with the segregation of the wire?

The Court: To Koppel Bros.?

Mr. Diether: To Koppel Bros.

The Witness: I have to say that Koppel didn't do the job.

Q. (By Mr. Diether): Who did do the job?

A. Marine Terminals.

Q. Did Koppel Bros. do any work for you?



(Testimony of James E. Sweeney.)

A. The only work that I recall was the supervision of segregation made by M & M Transfer.

Q. Were these instructions that you have given to Koppel Bros. in C-M1 turned over to Marine Terminals?

A. I don't believe so.

Q. Were these instructions canceled?

A. Koppel couldn't handle the work because he couldn't get the labor and that automatically canceled it.

Q. What instructions did you give to Marine Terminals in connection with that same shipment?

A. Verbal. My recollection is that they were similar to the written instructions there.

The Court: Do you know whether or not Koppel handed [1246] their instructions to Marine Terminals?

The Witness: He may have.

Mr. Bunn: You mean you do not know?

The Witness: I don't know.

Q. (By Mr. Diether): Were they verbal or written to Marine Terminals?

A. I don't know.

Q. I show you Defendant Bank's Exhibit C-S, which purports to be a letter, carbon copy of a letter from Mattoon & Company to Moore-McCormack Lines. Was that letter prepared in the regular course of business?

A. Yes.

Q. And sent to Moore-McCormack Lines on or about the date it is dated?

A. Yes.

Mr. Diether: I will ask that that be marked in evidence.

(Testimony of James E. Sweeney.)

The Court: Admitted.

(The document previously marked Defendants' Exhibit C-S was received in evidence.)

Q. (By Mr. Diether): I show you Defendant Bank's Exhibit C-R, which purports to be a carbon copy of a letter from Mattoon & Company to Indies Terminal, dated April 24, 1947. Was that letter prepared in the regular course of business and sent to Indies Terminal on or about the date it is dated? [1247] A. Yes.

Q. That is the original of it? A. Yes.

Mr. Diether: I will ask that that document be marked as defendant bank's exhibit next in order.

The Court: Let me see it.

(The document referred to was passed to the court.)

The Court: C-S is dated March 31 and C-R is dated April 24, is that correct?

Mr. Diether: Yes.

The Court: They both relate to the same 610 bales of wire?

The Witness: Yes.

The Court: Admitted.

(The document previously marked Defendants' Exhibit C-R was received in evidence.)

\* \* \*

Q. Did you employ Best & Company to make the report which is attached to Plaintiff's Exhibit 39?

The Court: Best?

(Testimony of James E. Sweeney.)

Mr. Diether: And Company. [1248]

The Witness: You mean Toplis & Harding, don't you?

Q. (By Mr. Diether): The document I refer to has been marked as 39-C and it purports to be signed by Best & Company.

A. May I see it, please?

(The document referred to was passed to the witness.)

The Witness: Yes.

Q. (By Mr. Diether): Did you order that survey that is reported there in that document?

A. Yes. [1249]

\* \* \*

Q. (By Mr. Diether): Mr. Sweeney, were instructions given to Best & Company by you in connection with any survey of the wire here in controversy?

A. I recall that I phoned Best & Company and talked to the gentleman that signed that, Mr. Swanson, outlined the situation, what we had down there and what we needed, and instructed him to go through their usual type of survey.

Q. What wire did you tell him to make a survey of? [1251]

A. I explained to him that there was a separation that was not too clearly defined, but the portion that was set out on the dock where it was marked for Dulien Steel was the portion to be surveyed.



(Testimony of James E. Sweeney.)

Q. Was the purpose of that survey merely to collect evidence for this trial?

A. It was done on the instructions to me by Mr. Londono.

\* \* \*

The Court: What is wrong with collecting evidence for a trial? It is a good thing once in a while.

Mr. Diether: But are the defendants going to be charged with the expense of collecting the evidence?

The Court: Maybe so.

Mr. Diether: That is the first time that I have heard of that being done.

Mr. Bunn: It is for mitigation of damages, if your Honor please, whatever was done.

The Court: What was the date of the report again? [1252]

The Witness: August 22nd.

\* \* \*

Q. (By Mr. Diether): Mr. Sweeney, was any record kept of the quantity of galvanized wire that was shipped to South America?

Mr. Bunn: As distinguished from black?

Mr. Diether: From black, yes.

The Witness: No.

Q. (By Mr. Diether): Either by weight or by number of rolls? A. No.

Q. Was there any record kept of the quantity of

(Testimony of James E. Sweeney.)

galvanized wire that was delivered to Gonzalez and Blanco?      A. I don't know.

Q. That is under the sale from Mr. Londono to Gonzalez & Blanco?      A. No.

Mr. Bunn: Pardon. May I have that question and answer read?

(The record referred to was read by the reporter as follows: [1253] "Q. That is under the sale from Mr. Londono to Gonzalez & Blanco?      A. No.")

Q. (By Mr. Diether): And that would be true both with respect——

The Court: Is there some evidence here that Londono sold galvanized wire to Gonzalez & Blanco?

Mr. Bunn: As distinguished from black wire, your Honor means?

The Court: Yes.

Mr. Bunn: No.

The Court: I did not recall any.

Your question was based upon the proposition that he had made sales. I did not recall that there was any evidence of sales of galvanized wire.

Mr. Diether: The wire I think was sold without any reference to whether it was black or galvanized, but I was inquiring of this witness if any record was kept of that, of the wire that was delivered to Gonzalez & Blanco, whether any record was kept as to what quantity was galvanized and what quantity was black.

The Court: If there was any galvanized.

(Testimony of James E. Sweeney.)

Mr. Diether: If there was any.

The Court: There is no evidence yet that there was any.

Mr. Diether: Assuming that there was any. And I take [1254] it his answer is that no record was kept.

The Witness: No.

Q. (By Mr. Diether): And that would be true also of black wire if there was any? A. Yes.

Q. Did you accompany Mr. Londono to the office of Matson Navigation Company in Wilmington sometime in August, 1946? A. Yes.

Q. And do you know what date that was?

A. No, I don't.

Q. Was anyone with you besides Mr. Londono?

A. Just he and I.

Q. Will you state what occurred on that occasion? A. He wanted to——

Mr. Bunn: Pardon me. State what was said, Mr. Sweeney. This word "wanted" is a conclusion word.

The Witness: Well, Mr. Londono said, in substance, he wanted to see——

Q. (By Mr. Diether): Said to whom?

A. To me before we went.

The Court: That is August 31st now?

The Witness: I don't remember the date. [1255]

The Court: What date did you ask him?

Mr. Diether: I didn't ask him. I said sometime in August and he said he went in August, as I recall.

The Witness: Yes.



(Testimony of James E. Sweeney.)

He stated that he wanted to go to Matson and see if he could, or ask the agent there if he could, see the original bill of lading covering the movement of the wire that was sold to him.

We went to Wilmington, and talked to Mr. Ford.

Q. (By Mr. Diether): You talked to Mr. Ford at Wilmington?

A. Yes. He is the freight agent. And I requested of Mr. Ford, or asked him, if we could see the original bill of lading covering the movement, and he said that he did not have it in his files but then Mr. Londono wanted to see what a Matson bill of lading looked like and Mr. Ford presented a sample of the Matson bill of lading and Mr. Londono examined it, and that was all that took place.

Q. Did you see any copy of any bill of lading that involved the shipment of wire here involved?

A. I saw no copy or no lading that had any relation—just the one blank sample. That is all the documents we saw.

Q. Did Mr. Londono have any documents with him?      A. None that I know of.

Q. Nothing on the document which was shown to Mr. [1256] Londono, it was merely a blank form without any typing on it?

A. It was a blank bill of lading with the usual contracts and setup on it.

Q. Did you have it in your hands?      A. No.

Q. Did Mr. Londono have it in his hands?

A. Yes.

Q. Was any inquiry made by Mr. Londono at

(Testimony of James E. Sweeney.)

that time as to whether the bill of lading involving the shipment of the wire here in question was clean or not?      A. I don't recall that he asked that.

Q. Did he inquire whether or not the shipment of wire here involved was on a straight or order bill of lading?

A. No, I don't recall that he asked that.

Q. Did he ask to see a copy of the bill of lading in question?      A. He did.

Q. What was the reply?

Mr. Bunn: That has already been asked and answered.

The Court: It has been asked and answered. The objection is sustained.

Q. (By Mr. Diether): You mentioned the fact that strike conditions existed at the Harbor. Did they affect the taking of delivery of the wire by Mr. Londono at any time during the month [1257] of August?

A. The only delay that occurred as the result of strike conditions was when the ship first docked, at which time there was a work stoppage, I believe, for two or three, possibly four, days.

Q. Was that just for the unloading of the vessel?

A. The discharge of the vessel; yes.

Q. It didn't have anything to do with taking cargo away from the dock?

A. No, except it delayed the entire move.

Q. In other words, it delayed the unloading of the vessel?      A. Yes.

(Testimony of James E. Sweeney.)

Q. Do you know on what date the total cargo of wire was discharged from the White Squall?

A. No, I don't.

Q. Did you know what day those strike conditions existed that you have referred to which prevented the unloading of the cargo from the White Squall?

A. Well, the week that ended July 27, I believe; the work stoppage was around the 25th or 26th.

Q. Of what?           A. Of July.

Q. 25 or 26 of July?

A. That is merely my rough recollection. [1258]

Q. You gave delivery orders to Matson for delivery of wire to Gonzalez & Blanco, did you not?

A. To Gonzalez & Blanco?

Q. Yes.           A. You mean on the portion——

Q. That was sold by Mr. Londono to Gonzalez & Blanco.

A. I would have to see those files. I don't recall whether I gave them to Matson or to Gonzalez or who they were made out to.

Q. Could you tell by looking at the file?

A. Yes.

Q. Which file, which portion do you wish to see?

A. I don't remember the number of that exhibit. It starts where we started yesterday morning.

The Court: No. 40?

The Witness: I think so.

The Court: Or No. 39?

The Witness: No, it wouldn't be 39. I think it is 40.



(Testimony of James E. Sweeney.)

The Court: No. 40 is the bills of lading with the attendant documents, the shipments.

The Witness: Well, it was either just before those documents or after.

The Court: Let us see the rest of Exhibit 39, Mr. Clerk.

(The document referred to was passed to the court.) [1259]

The Court: That is the supporting documents?

The Witness (Examining documents): It shouldn't be here. No, it is not in this batch. May I step over to the desk and look?

The Court: Yes, you may do so.

The Witness (Examining files): That is the one.

The Court: That is Exhibit?

Mr. Diether: The witness has indicated that Exhibit 40-1 is the portion of the file that he referred to.

Q. Referring to that exhibit, can you now answer the question?

A. Yes. They were issued to Transmarine Navigation.

Q. Were they directed to deliver a certain quantity of wire?

A. Yes, in accordance with what Mr. Gonzalez indicated he wanted to take and pay for.

Q. Was it in tons or in rolls? A. Tons.

Q. Was any record kept by Mattoon & Company as to the number of rolls of wire that was delivered to Gonzalez and Blanco? A. No.

(Testimony of James E. Sweeney.)

The Court: That is, as distinguished from any other kind of a record?

The Witness: Yes; that is right. [1260]

The Court: In other words, your records are there?

The Witness: That is correct.

Q. (By Mr. Diether): Did you keep any record at all of the actual weight of the wire that was delivered to Gonzalez & Blanco?

A. None other than what was indicated on the delivery orders.

Mr. Laven: What was that last answer?

(The answer referred to was read by the reporter as follows: "A. None other than what was indicated on the delivery orders.")

Q. (By Mr. Diether): On Exhibit 39 you have indicated certain additional expenses that Mr. Londono had in connection with this transaction. One of the first items that you have listed there is dock storage, Pier A, Long Beach, \$2837.45. Can you find the detailed invoice for that dock storage which Mattoon & Company received from Matson or from Transmarine?

A. It is in the file of either the Mormacreed or the West Wind. That is 38-1, 2 and 3, I believe.

Q. I am handing the witness Plaintiff's Exhibit 38-1, 2 and 3 for identification. Are those the documents that you refer to?

A. I will have to find the supporting [1261] in-

(Testimony of James E. Sweeney.)

voice. (Examining file.) It must be in the rest of Exhibit 39. (Examining documents.) Yes.

Q. The witness has indicated Exhibit 39-FF, which is a statement of Mattoon & Company, or purports to be a statement of Mattoon & Company, to the Citizens National Bank. I was asking you for the detail of the demurrage charges from Matson or from Transmarine.

A. The explanation is here and it reads: "Dock demurrage and storage for 894 tons barbed wire per attached Transmarine Navigation invoice No. 478." Now there is no copy of that invoice in this file but Transmarine has it at the dock.

Q. Do you know when dock demurrage started on this shipment?

A. I don't know the exact day.

Q. Did you know what period of time was covered by that demurrage?

A. I don't know that either.

Q. Do you know when it terminated?

A. It didn't terminate, as long as the wire stayed there on the dock, demurrage accrued.

Q. To whom?

A. You mean against whom?

Q. Yes.

A. Against whoever owned the wire. [1262]

Q. What was the amount, how many tons?

A. 894.

Q. 894 tons?            A. Yes.

Q. Was that for any specified time for that quantity of wire, or was it——



(Testimony of James E. Sweeney.)

A. Yes, there is a detail on that, and it is available. The records are kept, in this case, in Transmarine's office.

Mr. Bunn: Didn't you subpoena the Transmarine files?

Mr. Diether: Yes. It is here.

Q. You have no personal knowledge of any of that demurrage other than what is on the bill from Transmarine?

A. No. We transmitted or supported our statement with a copy of Transmarine's invoice.

Q. Is that the bill you refer to that you got a reduction of \$3000 on?

A. No, it was subsequent to that time.

Q. Covering what period of time?

A. I believe after September 30, 1946.

Also to add to that, the strike started September 1st and I believe, as was the custom, the Harbor Department automatically reduced the dock demurrage charges for all cargo owners that had merchandise on the docks, but the reduction that we obtained after the 30th was below the allowance that the Harbor Department made. [1263]

Q. That reduction was made as a result of strike conditions in the Harbor?

A. The reduction during September 1st to September 30 period, and then we obtained additional reduction because that wire I don't believe is all cleaned off the dock until sometime in December.

Q. Do you know that \$3000 reduction that you obtained, did that continue on through to December?

(Testimony of James E. Sweeney.)

A. Well, it was the period between the 30th of September and whenever the final cleanup was made in December.

Q. You mean when the wire was finally removed from Pier A?      A. That is right.

Q. On Defendants' Exhibit 39, where you have listed these extra expenses, there is an item of \$130.50 for extra drayage. Do you know what that is for?

A. Yes, that covers the movement of the wire from Moore-McCormack Dock back to Pier A on the initial delivery.

Q. That is the one that you told us about that you sent back that was on the unloading trucks?

A. Yes. [1264]

\* \* \*

### Cross-Examination

By Mr. Dasteel:

Q. Mr. Sweeney, I believe you testified that Mr. Londono used your offices as his headquarters. Is that so?

Mr. Bunn: I don't think he so testified as to the word "headquarters."

The Court: No, he didn't.

Mr. Bunn: I object to the question.

Q. (By Mr. Dasteel): Did Mr. Londono occupy a desk in your office? In other words, was it available to him and did he use it?

A. Space is always available, but he didn't occupy a desk and he didn't use it.

(Testimony of James E. Sweeney.)

Q. Did he receive telephone call at your office?

A. Occasionally, messages.

Q. How frequently would you say he came to your office during the period that this shipment applied?

A. There is no way of telling. If matters had to do [1266] with the shipment, the wire was pressing, he might come frequently and stay a fair length of time; at other times I might not see him for a day or two.

Q. Did he use your office, your stenographer or your help for the purpose of writing letters to Colombia or other people?

A. On a few occasions. He couldn't have done it to Colombia because the girl we had couldn't take Spanish dictation.

Q. Were your files covering this transaction open to him?      A. Yes.

Q. And he could remove documents at any time he chose?      A. Yes.

The Court: Did he ever have access to the files, that is, take the files?

The Witness: Never from the office, but he used them in the office.

The Court: He looked at them in the office?

The Witness: Yes.

Q. (By Mr. Dasteel): When was the first time that you saw any wire unloaded from the steamer White Squall onto the dock at Pier A?

A. Well, it was on a morning that I don't remember when the ship was first starting to dis-



(Testimony of James E. Sweeney.)

charge, and they were loading direct into gondola cars and it was wire for Gonzalez & [1267] Blanco.

Q. Monday, I believe, was July 29, 1946——

Mr. Bunn: Are you asking him?

Mr. Dasteel: I am refreshing his memory. You may correct me if I am wrong, Mr. Bunn.

The Witness: It could have been either Sunday or Monday morning. I believe they started to discharge on Sunday, which would have been the 28th.

Q. (By Mr. Dasteel): Were you there on Sunday, the 28th? A. I could have been.

Q. When is your first distinct recollection of the day on which you first saw the wire?

A. I can't tell you.

The Court: You mean any of the wire?

Mr. Dasteel: Yes, any of the wire on board the White Squall, either on board or on dock.

The Witness: It was on that morning, and it was either the 28th or the 29th, but I can't clearly remember.

Q. (By Mr. Dasteel): Now when was the first time you saw wire on the Moore-McCormack dock?

A. The afternoon of July 31st.

Q. That would be on a Wednesday?

A. Yes. [1268]

Q. And that wire was delivered there for and by Mr. Londono? A. Yes.

The Court: Delivered there for and by, was that your question?

Mr. Dasteel: For and by the instructions of Mr. Londono.

(Testimony of James E. Sweeney.)

The Witness: Yes.

Q. (By Mr. Dasteel): Now you testified that among the wire at the Moore-McCormack dock that you observed some of the wire was rusty.

A. Yes.

Q. How did you know it was rusty, by the color or did you make any other test?

A. It wasn't necessary, we all know what rust looks like.

Q. I beg to differ with you. We do not all know.

What type of an observation did you make to come to the conclusion that the wire was rusty?

The Court: You know what rust looks like, that is what you mean to say?

The Witness: I do know.

Q. (By Mr. Dasteel): Did you go over and touch any of the wire and examine it closely?

A. Why, yes. We walked around and I did personally, I [1269] looked at the wire that was on the pallet boards, looked at the wire that was still on the trucks and to me—and I believe I know what rust is—it was obviously rusty.

Q. From what distance did you observe the wire?

A. From here to here. (Indicating.)

The Court: Indicating immediately adjacent.

The Witness: One foot.

Q. (By Mr. Dasteel): Can you tell us the dates that that wire was actually picked up and removed

(Testimony of James E. Sweeney.)

from Pier A at Long Beach? A. The first?

Q. Yes, the very first.

Mr. Bunn: For whom? I object to the question as indefinite and uncertain as to what he means.

The Court: To where?

Mr. Dasteel: To any place.

Mr. Bunn: For Londono as distinguished from Gonzalez & Blanco?

Mr. Dasteel: I haven't said anything about Gonzalez & Blanco. I am talking about the Londono wire right now.

The Witness: Well, the first day would be July 30 when it was picked up.

Q. (By Mr. Dasteel): Picked up by the M & M Transfer Company? A. Yes. [1270]

Q. On instructions which you received from Londono? A. Yes.

Q. That was on July 30? A. Yes.

Q. Was that in the forenoon or the afternoon?

A. I don't know. I wasn't at the dock.

Q. That is your statement, that the wire was was picked up on instructions of Londono by the M & M Transfer Company who received instructions from you? A. Yes.

\* \* \*

Q. (By Mr. Dasteel): I show you Plaintiff's Exhibit 39-6 and draw your attention to a bill of lading issued by the Moore-McCormack Lines——

Mr. Bunn: Under what date?

The Witness: April 21, 1947.



(Testimony of James E. Sweeney.)

Mr. Dasteel: April 21, 1947.

Q. —and ask you if you prepared this bill of lading.

A. I did not. It was prepared in Mattoon's office. [1271]

\* \* \*

Q. I ask you, would you call that a clean bill of lading?

Mr. Bunn: I object to the question. The document speaks for itself.

The Court: I think the question is proper. The objection is overruled. That is, in the custom and practices of the trade?

Mr. Dasteel: That is the question.

The Witness: Yes.

Q. (By Mr. Dasteel): And there is no indication on the said bill of lading that the wire was rusty or otherwise damaged, is there? A. No.

Q. And then according to this bill of lading, which sets forth the fact that 477 bales of barbed wire were shipped by J. B. Londono, the shipper, to Cartagena, Colombia? A. Right.

Q. On April 21, 1947? A. Yes.

The Court: Is that stamped "non-negotiable"?

The Witness: It is the third original. [1272]

The Court: The original would be stamped "non-negotiable"?

The Witness: Let's see. Well, it so happens they did not on this one stamp it "non-negotiable."

The Court: Did they stamp the original?

The Witness: No.

(Testimony of James E. Sweeney.)

Mr. Dasteel: There is a copy here, your Honor, which states "copy, non-negotiable," just a copy.

The Court: It says the copy is non-negotiable?

The Witness: Yes.

Mr. Dasteel: Which would indicate that the original might have been negotiable.

Mr. Bunn: I move to strike counsel's last statement. He is not testifying.

The Court: I regard it as argument. [1273]

\* \* \*

Mr. Dasteel: I just want to show, your Honor——

The Court: I know what you want to show.

In the custom of the trade, Mr. Sweeney, assuming that that shipment was made as indicated in that bill of lading which counsel just laid before you, where would the original bill of lading now be?

The Witness: I can explain——

The Court: Or would it have last been in its course of shipment?

The Witness: There is three ladings in all areas except very few and you always issue three.

The Court: Three originals?

The Witness: Three originals, and there is a statement on the lading that says one accomplished, the others stand void, the reason being you send them through the mail separately, and if one, to assure its arrival, in case one is lost one is almost certain to get there. And in this case [1274] the first and second originals were sent in separate mails?

(Testimony of James E. Sweeney.)

The Court: To?

The Witness: To the consignee. And the third one remained in the files, and whichever one he took delivery with at destination was surrendered to the steamship company and remains in their files at destination.

The Court: So that it is a custom in the trade to mail two original bills of lading to the consignee?

The Witness: In separate mails; yes.

The Court: In separate mails?

The Witness: Yes.

The Court: And upon his surrender of either one, when you say original, one may be a carbon copy but signed as an original?

The Witness: Yes.

The Court: And when he delivers one of those to the steamship company he is entitled to the delivery of the goods?

The Witness: Yes.

The Court: That is in the custom of the trade?

The Witness: Yes. [1275]

\* \* \*

Q. Now on Exhibit No. 39, which I presume you remember, there was a charge of \$750 which you stated was owing. Now is that owing to you personally or to Mattoon & Company?

A. To Mattoon & Company.

Q. Has that ever been paid? A. No.

Q. And that charge was made sometime in 1946, I believe? A. That is right.



(Testimony of James E. Sweeney.)

Q. Who is the \$750 owing to?

A. Mattoon & Company.

Q. Yes, but I mean who made the [1276] charges?

A. Mattoon, and it was set up by me.

Q. But Mattoon owes that \$750, they haven't paid it yet, have they?

A. Mattoon doesn't owe it to anybody.

Q. How was the \$750 made up? What items go into it? As I understand it, it was for extraordinary services.

A. That is correct.

Q. Did you ever send Mr. Londono a bill for \$750?

A. I believe he was invoiced for it.

Q. You believe you did?

A. Yes.

Q. Has he paid it?

A. No.

Q. Have you asked him to pay it?

Mr. Bunn: You mean personally and orally?

Mr. Dasteel: Either by letter or from Mattoon & Company.

The Court: He said he was invoiced. Is that not a request? If it is not, I have been making a mistake a lot of times in paying bills.

Mr. Dasteel: Lots of bills are sent and many are unpaid.

Q. Were any efforts made by Mattoon & Company other than sending the invoice to Londono to effect a collection of that bill?

A. No. [1277]

\* \* \*

The Court: You are engaged in business for yourself now?

(Testimony of James E. Sweeney.)

The Witness: Yes.

The Court: And you are a competitor of Mattoon & Company?

The Witness: That is right.

Q. (By Mr. Dasteel): Under what name are you operating now?

A. Best Forwarding Service.

Q. Mattoon & Company is still in business?

A. Yes.

Q. And I believe you just answered his Honor by saying that they are competitors of yours, is that correct?

A. That is right. [1278]

\* \* \*

Q. During the time that Mattoon & Company were representing [1281] Mr. Londono in the handling and the shipment of the barbed wire that is in controversy here, there was some wire at the Moore-McCormack dock and there was some at Pier A at Long Beach, was there not?

Mr. Bunn: I object to the question because you said during the time. Do you mean a certain portion of the time?

The Court: You mean at one time or another?

Mr. Dasteel: At one time or another.

The Witness: Yes.

Q. (By Mr. Dasteel): Now was the responsibility of the safety as to quantity of this wire yours?

A. No.

Q. During the time that you were given instructions by Mr. Londono for shipping?

A. No.

Q. Whose responsibility was it, do you know?

(Testimony of James E. Sweeney.)

A. Yes. The steamship company or the dock operator where the wire rested.

Q. When you first requested the removal of wire from the Long Beach pier, what document, if any, showing your authority to take delivery of this wire did you offer or give to the Matson Navigation Company, or whoever had the wire in charge?

A. I didn't give them any document except we held that [1282] paid receipted freight bill which they would accept as the release, although we could not surrender it to them, and it was also understood that Dulien Steel was to give them a letter authorizing the release of the wire to Londono or to his order.

Q. In other words, you took delivery of some wire on July 30th without any document whatsoever being given to either the Matson Navigation Company or the Marine Transportation Company?

The Court: Document being given by Mattoon to them?

The Witness: Yes, that is right.

Q. (By Mr. Dasteel): Is that the custom of the trade?

A. Yes, Matson was satisfied by our verbal advice that those arrangements were in order and they had already made arrangements to have the matter confirmed in writing.

The Court: With Dulien?

The Witness: Yes.

Q. (By Mr. Dasteel): Now you employed the M & M Transfer Company to take a physical de-



(Testimony of James E. Sweeney.)

livery of the wire from Pier A at Long Beach to Moore-McCormack dock, did you not?

A. Yes, that is right.

Q. Now when the M & M Transfer Company man arrived on the scene and said, "I want to pick up some wire," what did [1283] he have to show, did you know?

A. There was already in Matson's hands the delivery order instructing them to release it to M & M.

Q. The delivery order? A. Yes.

Q. Who issued the delivery order?

A. Mattoon.

Q. Is that in evidence? A. Yes. [1284]

\* \* \*

Q. Anyway, you referred to a release by either the Matson Navigation Company or the Transmarine Company. Which did you refer to, the release of the wire by Matson or by the Transmarine Company?

A. The release by Matson because they—Transmarine was the dock agent for Matson and actually Transmarine Company could be considered to be Matson under those conditions.

Q. Transmarine was just an agent of Matson?

A. That is right.

Q. Now what kind of a release is it? Is it a document or is it verbal?

A. Well, in this case the release included possession of the receipted paid freight bill and the written authorization by Dulien Steel. But in the ab-

(Testimony of James E. Sweeney.)

sence of immediate written authorization the verbal instructions were accepted because [1285] Matson knew Dulien, Matson knew Mattoon, and there was no reason for them to hold up matters awaiting written authorization.

Q. Is it a custom of the trade then to release shipments over the telephone and by word of mouth without the presentation of any particular documents between the shipping company and the customhouse broker like Mattoon & Company?

A. Yes, if they are known and established, and also direct consignees. [1286]

\* \* \*

The Court: Let me reframe the question.

If I understand your testimony, you had a receipted paid freight bill in connection with these goods. There was delivered to Matson an instruction from Dulien in connection with these goods?

The Witness: Yes.

The Court: Was that in accordance with the custom of the trade, to secure delivery of goods shipped by boat without the surrender of the bill of lading? [1287]

\* \* \*

The Witness: Well, I will have to explain it without answering you directly. The bill of lading had to be surrendered and the freight paid at the same time.

The Court: That is, in the custom of the trade?

The Witness: Yes. And then the steamship

(Testimony of James E. Sweeney.)

company takes the freight money and the bill of lading and turns over to the consignee the paid receipted freight bill.

In this case the transaction was a little out of the ordinary because the transmittal of the merchandise was made through steamship channels and that was the reason for the necessity of the letter from Dullen to Matson authorizing the release to Londono.

The Court: You mean because there was an absence of a bill of lading?

The Witness: Absence of a bill of lading.

The Court: In the possession of Londono?

The Witness: Yes.

\* \* \*

The Court: May I ask one more question and then you can have the whole series of them read. [1288]

You have testified that you did not receive the bill of lading.

The Witness: Yes.

The Court: And accordingly did not surrender it to anybody?

The Witness: Yes.

The Court: Did you conduct all your transactions on the assumption that the bill of lading had been surrendered to Matson?

The Witness: Yes. [1289]

\* \* \*

The Court: When I said "in the possession of Londono," or your company acting for Londono?



(Testimony of James E. Sweeney.)

The Witness: Yes.

\* \* \*

The Court: Just a moment now. While I am on this subject I want to get the custom of the trade straightened out.

According to your testimony, the custom of the trade is to present the bill of lading, pay the freight, get a receipted [1290] freight bill?

The Witness: Yes.

The Court: Then the custody of that freight bill entitles the person having it to get the merchandise wherever it is?

The Witness: Yes.

The Court: So that you present the freight bill to the boat, or whoever is in immediate charge of the boat, or the dock?

The Witness: Yes. That would have to be supported by authorization from the——

The Court: Consignee?

The Witness: ——consignee, as was done in this case.

The Court: I see.

Mr. John Morrow: Again your Honor is speaking only in so far as Matson is concerned?

The Court: Surely, the custom of the [1291] trade.

\* \* \*

The Court: When is a release effected, when the document is handed to the company or when the fellow gets his goods?

(Testimony of James E. Sweeney.)

The Witness: It is simultaneous. You hand the document and you pick up the merchandise.

The Court: Of course you hand him one document and you get 30,000 bales of wire. That cannot be simultaneous.

Mr. Dasteel: That is what I am getting at.

The Witness: The handing of the release is the first part. The steamship company takes it and then you pick up the merchandise, whether it is one package or 30,000.

Q. (By Mr. Dasteel): Now you get a release or you give a release to the steamship company for, say, 5000 rolls of wire on a Monday. It takes three or four days to pick that wire up from the dock and move it.

Mr. Bunn: Three or four months.

Mr. Dasteel: Any time. [1292]

\* \* \*

Q. (By Mr. Dasteel): Is it the custom in the trade that the minute it is released, regardless of the time it takes to remove it from the dock, that it is the buyer's or the owner's responsibility and liability after the date of the release, is that true?

The Court: What is the date of the release?

Mr. Dasteel: Any time. I am asking the custom of the trade.

The Court: He presents a document to the steamship company and he doesn't complete his delivery until Thursday and somebody steals the wire in the meantime, what is the custom of the trade? Is that your question?

(Testimony of James E. Sweeney.)

Mr. Dasteel: Who is responsible, and whose liability is it, is the steamship company still liable or is the owner of [1293] the wire liable?

The Witness: For the portion that remains on the dock that is not picked up, it is still the responsibility of the steamship company or the dock agent.

\* \* \*

Q. Now referring again to the wire, both at the Moore-McCormack dock at any time and the wire at Pier A at any time that was purchased by Londono, did you for Mattoon & Company, or did you know whether Londono engaged a watchman to watch the wire to see that none was stolen at any time? A. No.

Q. Do you know what became of the quantity of wire that you testified to was on the Moore-McCormack dock at Wilmington that was very bad, whether it was a small portion or a large portion or some portion that was very bad? Was that replaced on the truck and taken back to Long Beach or was it dumped in the ocean?

A. That was the portion that was shipped on April 21, 1947. [1294]

\* \* \*

Q. Now in connection with the wire that was shipped to South America on the various boats, the Mormacreed, the West Wind, I believe, that was not segregated as to galvanized and black, I believe that was your testimony?



(Testimony of James E. Sweeney.)

A. I believe an attempt was made on the Look-out, which was that Grace Line ship. I think it is listed on the ladings as black and galvanized. I am not sure.

Q. But on the other shipments they were not?

A. I don't recall.

Q. I think you testified to that on cross-examination of Mr. Diether.

A. I don't believe they were.

The Court: He says he doesn't believe they were.

Q. (By Mr. Dasteel): However, there was some galvanized and some black? A. Yes.

Q. On the shipments other than the one you have testified to that some effort was made to segregate them? A. Yes.

Q. Now you stated that you were with Mr. Bunn when the [1295] selection of the four rolls of barbed wire known as Exhibits 51, 52, 53 and 54 were made? A. Yes.

Q. Who else was present on that occasion?

A. The only other person I recall is Mr. Londono.

Q. Approximately how many rolls of wire were at the location at which these four rolls were selected, approximately, or can you give it to us in tons? A. Well——(pause)

The Court: Were there several hundred or several thousand?

The Witness: There must have been a thousand, 1500 tons, spread all over the dock.

(Testimony of James E. Sweeney.)

Q. (By Mr. Dasteel): And just how did Mr. Bunn select them? Did he point this one out and did he point that one out? Will you tell us, please, the method he used in selecting them?

A. Well, he had one of the laborers that was there and he picked them out at random.

Q. I don't mean the laborers that handled it. I mean how did Mr. Bunn select it? Did he point to them and tell the laborers to pick that one out?

A. Yes, that is right, at random.

Q. How much time was spent in that selection of that particular wire? [1296]

A. I have no way of knowing; 15, 20 minutes.

Q. Was there any discussion by and between Mr. Londono and Mr. Bunn as to which particular roll to select?

A. No. The fact is, Mr. Bunn selected them independently.

Q. In other words, Mr. Bunn monopolized that particular operation, did he? A. Yes.

Q. Going back to that \$750 that we talked about and that Mattoon billed Londono for and that hasn't been paid yet, is any part of that \$750 coming to you personally? A. No part.

Q. Did you work on a salary or a commission from Mattoon & Company? A. A salary.

Q. No commission at all? A. No. [1297]

\* \* \*

(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. John Morrow:

Q. Mr. Sweeney, in handling the wire transaction for Mattoon and Company and for Mr. Londono, you had some dealings with the Transmarine Navigation Company, did you not? A. Yes.

Q. And also with Marine Terminals Corporation? A. Yes.

Q. And Mattoon & Company received various invoices from Transmarine Navigation Company for services performed by that company?

A. Yes.

Q. Some of those invoices at least are in the Mattoon file, which is an exhibit for identification in this case? A. Yes.

Q. Did you or did you not, that is, Mattoon & Company, receive invoices or statements from Marine Terminals Corporation for services performed by that company? A. Yes.

Q. And are those invoices likewise in the Mattoon file? A. Yes. [1298]

Q. You knew at that time, did you not, that Transmarine Navigation Company were the terminal operator of Pier A at Long Beach?

A. Yes.

Q. Transmarine Navigation Company had control of the dock and was operating as a terminal operator for the United States Government?



(Testimony of James E. Sweeney.)

The Witness: Yes.

Q. (By Mr. John Morrow): Your answer is that that was your understanding of the situation at the time you had these dealings? A. Yes.

Q. That Transmarine Navigation Company was in control and operating Pier 3-A at the time the White Squall was unloaded at Long Beach?

A. Yes. [1299]

\* \* \*

The Court: The question again is, did he know that they were operating it?

Mr. John Morrow: Yes.

\* \* \*

Mr. John Morrow: Yes, I will amend my question to include, according to your information at that time.

The Witness: Yes. [1300]

Q. (By Mr. John Morrow): According to your information at that time, that is, when the White Squall was being unloaded at Pier A at Long Beach, Marine Terminals Corporation performed the stevedoring services in unloading the White Squall? A. Yes.

Q. What was the nature of the services for which Transmarine Navigation Company billed Mattoon & Company?

Mr. Diether: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled. Do you wish to look at your memo?

(Testimony of James E. Sweeney.)

The Witness: I know without looking. It had to do with the payment of what is known as over-time checkers.

In other words, if they loaded the freight after regular hours, after 5:00 o'clock, it was up to whoever had issued the orders to pay those additional wages, and that is, I believe, in Exhibit 39.

Q. (By Mr. John Morrow): In other words, that was for labor in unloading the wire from the ship?

A. Yes.

The Court: Labor for unloading?

Mr. John Morrow: For unloading the wire.

The Court: I thought you were talking about Transmarine [1301] instead of Marine Terminals.

Mr. John Morrow: I understood the witness to say for labor for unloading.

The Court: I thought he said for loading.

The Witness: It would be for loading.

The Court: For loading off the dock onto the trucks or cars?

The Witness: Yes.

The Court: That is what I understood his testimony and your question to be.

Q. (By Mr. John Morrow): That is for Transmarine?

A. Yes.

Q. Do you recall what the nature of the services were which were billed by Marine Terminals Corporation?

A. Yes, for rail car loading and segregation.

Q. Of the wire in question?

A. Of the wire, yes.

(Testimony of James E. Sweeney.)

Q. You had no personal knowledge of any kind as to whether or not Transmarine Navigation Company was the agent for Matson?

The Court: You never saw their contracts?

The Witness: No.

Q. (By Mr. John Morrow): Were they so generally regarded in the Harbor [1302] Area by those doing business there? A. Transmarine?

Q. Transmarine.

A. Yes, they were agents, the berth agents, for any steamship company that elected to put their ships into their dock.

Q. Did you mean to say that your understanding was that Transmarine was berth agent?

A. Well, they are a dock operating agent, they had possession of the facilities at Pier A.

Q. In the operation of that particular dock?

A. Yes.

The Court: And the custom of the trade was that any steamship company that chooses to tie up there, they become the agent for them?

The Witness: Yes.

The Court: If there is any agency relationship after it is on the dock?

The Witness: Yes.

The Court: And Marine Terminals there was between the boat and the dock?

The Witness: Marine Terminals was a stevedoring company, did the stevedoring for Transmarine. In other words, they unloaded or loaded the ships.



(Testimony of James E. Sweeney.)

The Court: I see. [1303]

Q. (By Mr. John Morrow): You knew, did you not, that Matson Navigation Company was a berth agent for the government, for the WSA at that time?

A. Yes.

\* \* \*

Q. As I understand it, you had a conversation with Mr. Joseph Banning of Matson somewhere around August 15, 1946?

A. Yes.

Q. And you discussed with Mr. Banning on that occasion the matter of the alleged stoppage of delivery of wire to Mr. Londono?

A. Yes.

Q. That was the subject of your discussion with him?

A. Yes.

Q. Mr. Banning told you at that time, did he, that [1304] he was acting, that is, that Matson was acting—strike the “acting”—was a War Shipping Administration operator in the transaction?

A. Yes.

Q. And that Matson was acting under orders of the War Shipping Administration?

A. Yes.

Q. Mr. Banning also told you at that time, did he not, that the War Shipping Administration had instructed Matson Navigation Company to stop deliveries of wire to Mr. Londono?

A. Yes.

Q. He also advised you at that time to call Mr. Ball, the attorney for the War Shipping Administration, in San Francisco?

A. Yes.

Q. And thereafter you did call Mr. Ball, as you have testified in your direct examination?

A. Yes.

(Testimony of James E. Sweeney.)

Q. As I understand it, Mr. Sweeney, you visited the Wilmington office of Matson some time late in August, 1946? A. Yes.

Q. And at that time did you or Mr. Londono request them, that is, Matson, to search for the original bill of lading? [1305] A. Yes.

Q. And was there some search made for the original bill of lading at that time?

A. As I recall, Mr. Ford was unable to locate it.

Q. Your recollection is that they tried to locate the original bill of lading at that time?

A. Yes.

The Court: When a bill of lading is surrendered, what is the custom in the trade, if you know, for the issuer, or the steamship company, with relation to marking it as being cancelled, surrendered or—you used a term a while ago, I have forgotten.

Mr. Bunn: “Accomplished” was the term he used.

The Court:—accomplished?

\* \* \*

The Witness: The steamship companies I believe keep their records according to ships.

The Court: I am just thinking about the bill of lading now. Do you know what the custom of the trade is to mark on there as to a spent bill of lading?

The Witness: I don't know how they do it within their [1306] own office.

The Court: Have you dealt with Matson Company—do you know what their custom is?

(Testimony of James E. Sweeney.)

The Witness: Well, I would say their custom would be to take the ladings as they are surrendered and attach them to the ship's manifest in order to have a complete record.

\* \* \*

The Court: Do you know the custom of Matson with relation to what they mark on a spent or surrendered bill of lading? [1307]

The Witness: I do up until the time the freight is paid.

The Court: Up until the freight is paid?

The Witness: And including that time.

The Court: What is it?

The Witness: It is to stamp the bill of lading "Paid" and the freight bill "Paid" and initial the freight bill and return it to the consignee and they take in the bill of lading.

The Court: Very well.

Mr. Bunn: By "they," you mean the steamship company?

The Witness: Matson. [1308]

#### Cross-Examination

\* \* \*

By Mr. Laven: [1309]

\* \* \*

Q. Mr. Sweeney, I believe you testified on cross-examination by Mr. Diether that on the 31st of July, 1946, that you knew that the document which you had taken for a bill of lading was not a bill of lading but was a freight bill.

\* \* \*



(Testimony of James E. Sweeney.)

The Witness: I testified to that, yes.

\* \* \*

Q. (By Mr. Laven): Mr. Sweeney, did you after the 31st [1311] of July, 1946, ever tell Mr. Londono that the document you thought was a bill of lading actually was a freight bill which you received from the bank?

Mr. Bunn: I object to that.

Mr. John Morrow: That is objected to, that there is no testimony that he thought the document was a bill of lading at any time.

Mr. Laven: In his first testimony he said he didn't pay any attention to it.

The Court: I think he did, that he regarded it as a freight bill. [1312]

\* \* \*

The Court: Let us clear it up again.

Did you ever at any time take it for granted or believe that the document delivered to you by the bank was the bill of lading?

The Witness: No.

The Court: And which has since been identified as the freight bill?

The Witness: No.

The Court: You did not?

The Witness: No.

The Court: The objection to the question is sustained. [1313]

(Testimony of James E. Sweeney.)

Did you ever tell Mr. Londono that you did not have a bill of lading?

The Witness: No.

The Court: And that none had ever been delivered to you?

The Witness: No.

The Court: Why did you not do that?

The Witness: It wasn't necessary from the position I occupied to obtain delivery of the merchandise.

The Court: Was it customary in the practice of the trade for the bill of lading to be delivered to the customs broker?

The Witness: In this case it was an impossibility to deliver it, and it couldn't be called a custom.

The Court: Let us not speak of that. Ordinarily in a similar transaction, is it customary to deliver the bill of lading to the customs broker?

The Witness: Yes.

The Court: With the freight bill, the paid freight bill?

The Witness: Well, the freight bill isn't always necessary, but the transaction is not a usual one as far as the consignee getting goods. The only time it would be a custom of the trade, if we were brought an original bill of lading by the bank and placed it in trust. Then we would take that [1314] bill of lading, claim the merchandise from the steamship company, enter it through customs, and then return the customs release to the bank. That

(Testimony of James E. Sweeney.)

would be the mechanics under a normal transaction where a shipper sent it to a direct consignee.

But in this case it was from a shipper to a consignee and then resold to a party who was not indicated as a consignee on the bill of lading.

The Court: And paid for by the bank?

The Witness: Well, assisted by the bank.

The Court: Very well. Proceed.

Q. (By Mr. Laven): Now, Mr. Sweeney, I noticed on some of these documents that you have identified that there is indication of short tons. Will you tell us the weight of short tons as it is known in the shipping business?

A. 2,000 pounds.

Q. What is the weight of a long ton?

A. 2,240.

Q. Was all this wire that was reshipped, shipped on the basis of short tons?

A. My recollection is that it was.

Q. Did you handle any other shipments of barbed wire for Mr. Londono prior to July of 1946?

A. Did we handle other? [1315]

Q. Yes.            A. Yes.

\* \* \*

Q. Do you know the custom in the shipping business where the original bill of lading is issued?

A. Where it is issued?

Q. Yes.

A. In the steamship office at the port of departure.



(Testimony of James E. Sweeney.)

Q. You mean in the steamship office?

A. Yes.

Q. It would not be issued on the ship?

A. Under unusual circumstances, possibly, but no other time.

Q. Ordinarily the bill of lading is issued in relation to what time that cargo is delivered to the vessel?

A. Prior.

Q. Prior to its loading?                      A. Yes. [1316]

\* \* \*

Q. Mr. Sweeney, do you have any knowledge, by reason of handling this cargo for Mr. Londono, as to where the bill of lading was issued?

A. It would have been issued in Honolulu. [1317]

\* \* \*

The Court: Same ruling.

Do you know whether or not the custom of the trade is any different in Honolulu?

The Witness: No, I don't.

\* \* \*

Q. (By Mr. Laven): Mr. Sweeney, I believe you testified that some of the rolls of wire had some mud on them?                      A. Yes.

Q. Can you tell us your recollection of the color of the mud that was on that wire?

A. Well, in most cases it was rust stained.

The Court: No, the mud. Was the mud reddish colored or clay colored, or what?

The Witness: Rust colored.

(Testimony of James E. Sweeney.)

Q. (By Mr Laven): The mud was rust colored?  
A. Yes.

\* \* \*

Q. Mr. Sweeney, was there more than one color of mud on the wire?

A. Well, it would be various shades, I am sure.

Q. Mr. Sweeney, would you kindly look at these samples over here, these exhibits for identification?

A. Yes.

Q. I call your attention particularly to No. 53 for identification, and I point out to you on the bottom of one of the rolls where there are some heavy encrusted materials, and ask you to look at that and say if that was the appearance [1320] which you say the mud that you saw on the wire was at the dock.

A. (Examining exhibit): Well, the appearance now is nowhere near the same as then because that roll was damp at the time it was picked up and in four years it has dried out so that it is a different shade of mud.

Q. Now you say it was damp. Do you know whether it was oil or water on the mud at that time?

A. On this roll?

Q. No, on the rolls that you saw at the dock.

A. Well, it could have been either or both.

\* \* \*

Q. When you say that it had a damp appearance, will you explain that, describe it?

A. It was damp, it had been picked up damp, I

(Testimony of James E. Sweeney.)

assume, and had gone into the ship and came out of the ship damp.

Q. Would you say there was any difference in appearance of the rust which you saw on the wire and the color of the heavy particles which I have pointed out to you on Exhibit 53 for identification? [1321]

A. Well, there would be a variation in shade again. Rust looks different on wire than when mixed with mud.

\* \* \*

Q. Mr. Sweeney, I call your attention to Exhibit 52 for identification and ask you—let me go back one question.

You stated in your cross-examination, I believe, by Mr. Diether, that the wire was obviously rusty. Now I call your attention to Exhibit 52 for identification and call your attention to the side of this particular roll and ask you to tell us whether or not—tell us how the bottom of this roll compares in color, and appearance, with the rust which you stated you saw on the wire at the dock.

The Court: That has been asked and answered.

Mr. Laven: Not as to this roll, your Honor.

The Court: This roll?

Mr. Laven: Yes, No. 53 for identification.

The Court: Very well.

The Witness: The only difference is that this roll, the shades have been changed because it is dry and the great majority of that mud on the encrusted wire at the dock was still damp.



(Testimony of James E. Sweeney.)

Q. (By Mr. Laven): Then was the wire that you saw on the dock and which you say appeared to you to be rusty, was it darker in appearance than Exhibit 52 for identification?

A. Well, if moisture would make it a darker shade, it would be.

Q. And is that the same so far as Exhibit 53 for identification is concerned? A. Yes.

Q. Did you ever give any instructions to Transmarine or Matson Navigation Company to select the best wire on behalf of Mr. Londono in accepting delivery of the barbed wire under LA, Bill of Lading 29? A. No.

Q. Or M & M Transfer?

A. M & M Transfer, yes.

Q. What instructions did you give them relative to [1323] the selection of the wire?

A. To segregate the best that they could pull out of the lot.

Q. And did you give them any description or instructions relative to what you meant by the word "best"?

Mr. Bunn: You mean orally, Mr. Laven?

Mr. Laven: Let me ask the question to find out.

Mr. Bunn: I object to the question as indefinite and uncertain.

The Court: Objection sustained.

Did you give M & M instructions in writing?

The Witness: Yes.

The Court: Are they in these files?

(Testimony of James E. Sweeney.)

The Witness: Yes. I don't know that the segregation instructions are in writing.

The Court: Your recollection is that you gave them orally?

The Witness: Yes.

The Court: Very well.

Q. (By Mr. Laven): What were those instructions that you gave them relative to selecting the best wire?

A. The instructions as to the appearance of the wire made it necessary to get it separated as best as possible.

Q. What standard or what quality did you tell them, [1324] or basis to use, for the selection of this wire?

Mr. Bunn: I object to the question as calling for a conclusion, uncertain, indefinite. "Best" means best.

Mr. Laven: That may have a long variation between them.

The Court: Objection overruled.

The Witness: I told them to take out the best possible rolls they could see in the wire that was discharged.

Q. (By Mr. Laven): You left the selection of the best up to their judgment without any further description as to the word "best"?

The Court: Did you mention the word "rust" or "rusty wire"?

The Witness: Well, pull out wire with as little rust as possible on it, and we employed one man

(Testimony of James E. Sweeney.)

from Koppel Bros. to supervise the segregation. In other words, if he saw the laborers being a little lazy in pulling out the better rolls, he was to point out that they were to separate more finely or definitely.

The Court: That is the only instructions that you gave to M & M Transfer?

The Witness: Yes.

Q. (By Mr. Laven): Now, Mr. Sweeney, when you went down to the dock— [1325] let's see, I believe that it was the first time that you went down there on the 29th?

A. 28th or 29th.

\* \* \*

Q. When was it that you first talked to any representative of Matson Navigation Company relative to this wire?

\* \* \*

The Witness: I called them some time perhaps a week or 10 days before the arrival of the ship to determine when she [1326] was coming in and where they were going to berth her.

\* \* \*

Q. When was the next time you talked to someone connected with Matson?

A. I can't specifically recall.

Q. Was it the time you talked to Mr. Banning around August 15th?

A. No, we will say the next time of any importance was the first time I went there and went aboard the ship and also went into the dock office.



(Testimony of James E. Sweeney.)

The Court: That was about when?

The Witness: The 28th or 29th.

Q. (By Mr. Laven): What conversation and with whom did you have it at that time?

A. The gentleman's name I recall is Applegate. He worked, I believe, for Transmarine.

Q. He worked for Transmarine?

A. I believe so. And my purpose was to find out how soon the Dulien portion was going to be discharged so that we could start to take delivery when all the details were cleaned up. [1327]

Q. Now after you saw the wire being discharged, did you have any conversation with anyone connected with Matson or Transmarine?

A. Nothing of importance on the dock that I remember.

Q. Did you have any conversation anywhere else, at the office, either uptown or at Wilmington?

A. No, it had only to do with the details of the release which might have occurred day after day, or two or three times in a day.

Q. Was that the only kind of conversations that you had with Matson between July 28 and August 15, all relative to the release of the cargo?

A. Yes, that is right.

Q. There was no other conversation relative to any other matter between July 28 and August 15, 1946?

A. None that I can remember.

Q. After August 15th or on August 15th, you had a conversation with Mr. Banning, did you not?

A. That is an approximate date.

(Testimony of James E. Sweeney.)

Q. And you have told us the conversation that you had with Mr. Banning? A. Yes.

Q. And that was relative to the selection of the wire? [1328]

A. No, it was relative to the stoppage of the delivery of the wire.

Q. Stoppage of the delivery? A. Yes.

Q. And in that conversation he told you that Gonzalez & Blanco had an order bill of lading and Mr. Londono did not have any bill of lading; is that correct?

A. No, he didn't tell me that. Mr. Ball did.

Q. What did Mr. Banning tell you at that time?

A. Mr. Banning said, in substance, that his hands were tied and he could not take any action, and if I wanted to go beyond him, I would have to talk to the War Shipping Administration.

Q. After that when did you have any further conversation with anyone either connected with Transmarine or Matson Navigation Company?

\* \* \*

The Witness: Any further conversations I may have had with Matson had to do with the resumption of delivery.

The Court: Except the conference you testified about with Mr. Ford? [1329]

The Witness: Right.

The Court: When you went down there in the latter part of August?

The Witness: Yes.

\* \* \*

(Testimony of James E. Sweeney.)

Q. (By Mr. Laven): Now, Mr. Sweeney, was Mr. Londono with you on all of these occasions?

A. No.

Q. On what occasions was Mr. Londono with you?

A. It is hard to say. For instance, the call to San Francisco and Mr. Banning, he was not in the office then. When I first went to the dock I did it because we had to get things started and I don't recall that he was along at that time. I believe those are the two important times. [1330]

\* \* \*

Mr. Diether: Your Honor, I have this invoice now of Transmarine for that demurrage and I would like the opportunity to just ask the witness a few questions about it.

The Court: Is it marked for identification?

Mr. Diether: No, it is not, your Honor.

The Court: We will mark it for identification.

Mr. Diether: The original is marked Paid and is from [1331] the bank's file and the carbon copy is from the Transmarine file.

The Court: That will be C-X. Are there two documents?

Mr. Diether: Yes.

The Court: Copies?

Mr. Diether: One original and one copy.

The Court: C-X and C-X1.

(The documents referred to were marked Defendants' Exhibits C-X and C-X1 for identification.)



(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. Diether:

Q. I show you Defendants' Exhibits C-X and C-X1 for identification and ask you if that is the invoice showing the detail of the item of \$2,837.45?

A. Yes.

Q. Which you have listed on Plaintiff's Exhibit 39?

A. Yes.

Q. Was that received by Mattoon & Company on or about the date that those bills are dated?

A. Yes.

Q. That is, November 26, 1946?

A. Yes.

Q. Do you know if this bill for demurrage covers all of the wire which is included on bill of lading, LA-29?

A. No. [1332]

Mr. Bunn: Just a minute, please.

The Court: He said no.

Q. (By Mr. Diether): That is, that you do not know?

A. I know that it does not cover all of the wire on bill of lading, LA-29.

Q. How do you know that?

A. Because it calls for 894 tons and the bill of lading on LA-29 was for approximately 2,300 tons.

Q. Do you know whether that bill covers only the 2,000 tons which Mr. Londono was entitled to or any portion of the 2,000 tons?

A. It covers a portion of it.

Q. Does it cover any of the 300 tons to which Dulien was entitled?

(Testimony of James E. Sweeney.)

The Court: How would he know?

Mr. Diether: He says he checked these.

The Court: It is 800 some odd tons, but how does he know that it covers 300 tons to which Dulien was entitled?

Mr. Diether: That is the point I want to bring out.

The Witness: No, it doesn't show because the 300 to Dulien, if they had been picked up, he would have been billed the demurrage for them separately.

The Court: If he had picked them up?

The Witness: Yes. [1333]

Q. (By Mr. Diether): When does the demurrage start on the 894 tons?

A. It doesn't give the starting date—excuse me—no, it doesn't give the starting date.

Q. Do you know the date the demurrage started?

A. No, I don't.

Q. Do you know any other details about that demurrage other than shown on that shipment?

A. No, I don't.

Mr. Hubert Morrow: Is that the invoice of Transmarine?

Mr. Diether: It is.

I will ask that that be marked as Defendant Bank's next exhibit.

The Court: Admitted as C-X and C-X1.

(The documents referred to were received in evidence and marked Defendants' Exhibit C-X and C-X1.)

(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. Laven:

Q. Mr. Sweeney, at any time from the 29th of July, 1946, until the entire cargo of wire was unloaded from the White Squall, did you notice whether or not there were any identifying marks on each roll of wire indicating that it was [1334] Gonzalez & Blanco or Dulien Steel? A. No.

\* \* \*

Redirect Examination

By Mr. Bunn:

Q. Mr. Sweeney, you testified yesterday that you believed it was Mr. Londono's intention to segregate between galvanized and black before the wire got here; I mean it was his intention before the wire got here, that when the wire got here he would separate between the galvanized and the black. Did he ever tell you that? A. Yes.

Q. Do you know when? A. No.

Q. Did he tell you whether he intended to have that segregation made in Los Angeles County or after the wire got to Colombia? A. No.

Q. You testified yesterday I believe that you said that you did not deliver any documents to Matson Navigation Company at all after the delivery of the delivery order of July 31, 1946? [1335]

\* \* \*

The Witness: It says on there Matson acknowledged receipt on July 31.

The Court: July 31?



(Testimony of James E. Sweeney.)

The Witness: Yes, in pencil.

Q. (By Mr. Bunn): When you said yesterday that you did not after that time deliver any documents to Matson, did you or did you not mean to Matson direct as distinguished from any transfer company or transmittal to Matson?

\* \* \*

Q. Do you understand the question?

A. Yes, I understand it. The only documents were delivery orders—— [1337]

\* \* \*

The Court: Now if I may have a moment here.

This is the document about which you testified yesterday, and the original was produced, but I do not remember that number.

Mr. Diether: It is C-U, I think.

Mr. Bunn: Is that the M. and M. delivery order?

Mr. Diether: To Matson.

The Court: Matson Navigation Company released to M. and M. Transfer Company.

You said that that was given on the 31st. There is a notation, "Phoned to Mr. Ford, 10:25 a.m., 7-31." That was your notation?

The Witness: No, that was delivered to Matson's Los Angeles office and this gentleman, whose signature appears here, verbally transmitted it to the Wilmington office.

The Court: And this was delivered to Matson's office when, do you remember, July 29 or July 31?

The Witness: July 31.

(Testimony of James E. Sweeney.)

The Court: What does this number mean in the corner, "Please refer to 2333"?

The Witness: That is the file number that we designated for the transaction. [1338]

The Court: That is your file number?

The Witness: Yes.

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, I show you Exhibit C-U, and call your attention to the fact that in the upper left-hand portion near the margin of that document appear two perforation marks. Do you know what caused those perforation marks?

A. Yes.

\* \* \*

Q. What caused them?

A. A duplicate copy of the delivery order.

Q. Was there a custom in Mattoon's office regarding duplicates of delivery orders?

A. We always issued them in duplicate.

Q. Was there a custom about what was done with them immediately upon issuance? Were they fastened together or not?

A. They were always stapled together and then turned over to whoever they were addressed to. [1339]

Q. Have you any further explanation as to the presence of those perforations there and the absence now of any document attached to it?

Mr. Diether: I object to that as already asked and answered.

(Testimony of James E. Sweeney.)

The Court: Overruled.

Have you any further explanation?

The Witness: Yes. We always issued them in duplicate for the use of the truck company or steamship company that they are addressed to so that they can have one copy for additional use in the mechanics of their releasing the freight.

Q. (By Mr. Bunn): When you went to Matson's Wilmington office with Mr. Londono, and Mr. Londono, as you testified, asked to see the original bill of lading on the barbed wire and he was handed a document by Mr. Ford, how far apart were you and Mr. Londono sitting or standing at that time?

A. We were standing alongside one another.

Q. Did you examine these documents then which Mr. Ford handed to Mr. Londono?                      A. No.

\* \* \*

Do you know of any actual weighing on scales of any of [1340] the rolls of wire in this Dulien shipment?

Mr. Diether: When and at what time?

The Court: At any time.

Mr. Diether: I object to that as incompetent, irrelevant and immaterial, unless it is shown to be weighed at the time it left the dock.

The Court: Overruled.

The Witness: Yes. All the wire that went out on those Exhibits 38-1 through 5 were weighed.

Q. (By Mr. Bunn): In preparation for the shipment to South America?



(Testimony of James E. Sweeney.)

A. Yes. There are scale tickets in the files to support it.

Q. Do you know of the weighing of any of the wire other than that? A. No.

Q. What, if any, custom obtained in Mattoon's office in 1946 regarding the freedom of access of Mattoon's customers to Mattoon's files?

Mr. Diether: That is objected to, what the custom was. He has testified to what the relationship was between Mr. Londono and Mattoon.

The Court: Overruled. The question was opened up on cross-examination by someone.

The Witness: The files of all our customers were open to [1341] the customers. In other words, we needed certain supporting information and had to maintain the files, but if at any time they wanted to view them or pick up some notations or even documents, it was their privilege.

Q. (By Mr. Bunn): Was Mr. Londono given any greater privilege than was usually accorded to Mattoon's customers? A. No.

The Court: Was the custom of Mattoon & Company, if any original documents were taken from any of the files by the customers, to secure a receipt for them or a notation as to the time and the document?

The Witness: If we thought there was sufficient reason, we would.

Q. (By Mr. Bunn): You testified this morning that the first pickup of wire from Pier A for trans-

(Testimony of James E. Sweeney.)

portation thereof to the Moore-McCormack Line was on July 30. Now did you see it done?

A. No.

Q. How do you determine that it was on the 30th?

A. I would have to verify it with the trucking company.

Q. You saw it there on the 31st? A. Yes.

Q. Is that the reason you think it was done on the 30th? [1342]

A. That is the reason I thought it was started on the 30th.

Q. In other words, your statement this morning that it was done on the 30th was a conclusion from the fact that you saw the wire on the dock at Moore-McCormack on the 31st?

Mr. Diether: I object to that as leading and suggestive, and calling for a conclusion.

The Court: Overruled. Let us get on.

The Witness: The answer is yes.

\* \* \*

Q. (By Mr. Bunn): You said this morning, I believe, that there were no other persons present at the selection by Mr. Londono's counsel, Mr. Bunn, of the four rolls of wire which are in the courtroom. Do you mean that there were no other people on the dock? A. No, I don't.

Q. What did you mean?

A. I mean that no one else was closely interested.

Q. Were any of Koppel's men there at [1343] the time? A. I don't know.

(Testimony of James E. Sweeney.)

Q. There were people, though, weren't there?

A. Yes

Q. Did the Southern Pacific Company bill Mattoon for cash advances made to or by Transmarine or Marine Terminals?

Mr. Diether: What is the materiality of that?

Mr. Bunn: This morning he was asked about the payment by Mattoon & Company of special expenses for which Mattoon was billed by——

The Court: Transmarine.

Mr. Bunn: ——Transmarine. Now I want to know whether anybody else besides Transmarine billed Mattoon for disbursements made to Transmarine or Marine Terminals by such other parties, such as the Southern Pacific Railroad?

The Witness: Yes, the Southern Pacific did.

The Court: The supporting documents are in the file?

The Witness: Yes.

Q. (By Mr. Bunn): You said a while ago, in answer to a question—you were asked if you ever told Mr. Londono that you had not received a bill of lading—and you answered in the negative, that you had never told him that. Does that mean that you changed your testimony of the other day as to what you told him when he came and asked you if this document was a bill of lading and handed you the freight bill? [1344]

\* \* \*

The Witness: Well, my interpretation, I had that in mind when I answered it.

The Court: I asked you the question this morn-



(Testimony of James E. Sweeney.)

ing whether or not you had ever told him that you did not have a bill of lading.

The Witness: I am explaining. That was my interpretation because he came to me at this particular time with the freight bill and said, "Is this a bill of lading?" and I said "No."

The Court: At that time did you state to him whether or not you had ever received a bill of lading? Did he ask you if you had a bill of lading?

The Witness: I don't recall that he asked me. I merely said, "That is the only document I have ever received to cover the merchandise."

The Court: Very well.

Mr. Hubert Morrow: Your Honor's question this morning was why.

The Court: I asked him both, if he ever did and why he did not. [1345]

Q. (By Mr. Bunn): You stated a while ago, as I remember, that according to the custom of the trade, bills of lading are issued prior to the loading on the ship. What, then, is the meaning of the language "on-board" bill of lading?

Mr. Diether: That is objected to as immaterial. It hasn't any bearing on any issue involved in this case.

The Court: Overruled.

The Witness: The "on-board" endorsement means that the merchandise is on the ship and is so signed for by the steamship company.

Q. (By Mr. Bunn): Then "on-board" bills of

(Testimony of James E. Sweeney.)

loading are issued before the merchandise is actually on board?

A. No, that is the purpose of it.

Q. In other words, they are issued afterwards?

A. They are issued after the merchandise is loaded on board.

Q. And they make a representation that it is on there; is that what that means? A. Yes.

Q. Mr. Sweeney, when these rolls of wire that are in the courtroom now, Exhibits 51, 52, 53, and 54, were selected on the dock, was there any more or any less or any different quantity of rust on any of them—I mean of mud on any one [1346] of them—from what now appears thereon?

A. There was more.

Q. What movements have those rolls of wire to your personal knowledge been put through in the actual moving of them from Koppel's place to this courtroom?

The Court: That has been asked and answered. They were moved off and on the truck a couple of times, I suppose, and if mud was on there three or four years ago it has dried by now. [1347]

\* \* \*

May 3, 1950

RUSSELL H. MATHER

called as a witness by and on behalf of the plaintiff,  
having been first duly sworn, was examined and  
testified as follows:

\* \* \*

Direct Examination

By Mr. Bunn:

\* \* \*

Q. What is your business, Mr. Mather?

A. Manager of Gonzalez & Blanco, importers  
and exporters.

Q. Were you so engaged in 1946, in July and  
August? [1350]           A. Yes.

Q. And have you at all times since then been so  
engaged?           A. Yes.

Q. Mr. Mather, were you with Gonzalez & Blanco  
throughout the entire year, including the first six  
months also of the year 1946?           A. Yes.

Q. Did you go to Honolulu in 1946?

A. Yes. [1351]

\* \* \*

Q. Mr. Mather, did you—answer yes or no to  
this—conduct any negotiations on behalf of Gon-  
zalez & Blanco in Honolulu with Dulien Steel



(Testimony of Russell H. Mather.)

Products of California, Inc., or Dulien Steel Products, Inc., for the purchase of barbed wire by Gonzalez & Blanco? [1352]

\* \* \*

Mr. Bunn: Did the witness answer the question?

The Witness: Yes.

Mr. Bunn: The answer to the question was?

The Witness: Yes.

The Court: He answered yes.

Q. (By Mr. Bunn): With whom did you conduct those negotiations in Honolulu? [1353]

A. A Mr. Hofius.

Q. Mr. Lacy Hofius? A. Yes.

Q. Do you remember when you were in Honolulu in early 1946?

A. The latter part of May and first of June.

Q. Did you ascertain then what position, if any, Mr. Lacy Hofius occupied for Dulien?

\* \* \*

Mr. Dasteel: We stipulate that he represented Dulien, but this witness has no way of knowing what particular [1354] capacity he had.

\* \* \*

Mr. Bunn: That makes my question unnecessary.

The Court: Very well.

Q. (By Mr. Bunn): Mr. Mather, were you shown any barbed wire in Honolulu? A. Yes.

Q. By whom were you shown it?

A. Mr. Hofius.

Q. And where was the barbed wire?

(Testimony of Russell H. Mather.)

A. In three different locations.

Q. Do you remember what they were?

\* \* \*

The Witness: They were located at what I remember to be the Marine Corps Base, Camp Schofield, and another location that was connected with the War Assets Administration Yard, or something, over by Pearl Harbor. I don't recall the name.

The Court: The Marine Corps Base and Camp what?

The Witness: Schofield. [1355]

The Court: And another?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Calling your attention, Mr. Mather, to the wire which you saw at Camp Schofield, or Schofield Barracks I think it is called, will you tell us whether or not there appeared to be made any segregations of different kinds of wire in that which you saw? A. At Schofield?

Q. Yes, at Schofield Barracks?

A. They had done some work in palletizing and the wire that was palletized that I saw was good wire.

Q. Was it black wire or galvanized wire?

A. It was black.

Q. When you say "palletizing" you mean placing on pallets? A. That is right.

The Court: What is a pallet, a platform?

The Witness: A wooden platform.

Q. (By Mr. Bunn): Were the pallets uniform in size? A. Yes, sir.

(Testimony of Russell H. Mather.)

Q. What was the size, approximately?

A. They hold 20 coils.

Q. Piled in what manner? [1356]

A. Stacked.

Q. Do you remember how many in each tier?

A. No, I don't.

Q. But 20 coils?                      A. Yes, sir.

Q. Of coils weighing how much?

A. A hundred pounds.

The Court: Is that a hundred-pound coil over there, or a 28-pound coil?

The Witness: They look to me to be hundred-pound coils.

The Court: Approximately?

The Witness: Yes.

The Court: How were they stacked, like doughnuts?

The Witness: One on top of the other.

The Court: I mean on the side, this way or this way (illustrating)?

The Witness: On the side.

\* \* \*

Q. (By Mr. Bunn): Do you remember the occasion of your first observation of wire at Schofield Barracks? [1357]                      A. Yes.

The Court: How did you happen to go to Schofield Barracks?

The Witness: After discussion with Mr. Hofius.

The Court: Did he take you out there?

The Witness: He did.



(Testimony of Russell H. Mather.)

The Court: Did he drive you out there in a car?

The Witness: Yes, sir.

The Court: What did you see when you got there?

The Witness: Barbed wire.

The Court: How much?

The Witness: (Pause.)

The Court: Thousands of coils?

The Witness: Oh, yes. I would guess, and it would be merely a guess, between 2,000 and 2,500 tons.

The Court: Some stacked on pallets?

The Witness: Some stacked and some in piles.

The Court: How much of it was galvanized and how much was not galvanized?

The Witness: 99 per cent of it was not.

The Court: Was not?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you observe the condition of the portion which was not palletized? [1358]

A. Yes, sir.

Q. What did you observe in that regard?

The Court: I do not understand what he is talking about. Was it all palletized?

Mr. Bunn: No, sir. He has already testified that a small portion of it was palletized.

The Court: The galvanized wire was palletized?

Mr. Bunn: No, sir. He said a small portion of the wire was palletized and that was black wire that was palletized.

Q. Am I correct, Mr. Mather?

(Testimony of Russell H. Mather.)

A. Yes, sir.

\* \* \*

Q. What did you observe as to the condition of the wire at Schofield Barracks which you there saw was not palletized? [1359]

A. Good, bad and poor.

Q. Was it segregated as to being galvanized or black? A. No, sir.

Q. And the only segregation was that which was on the pallets, is that right?

A. That is right.

Mr. Diether: Will you answer audibly so we can hear you?

The Witness: That is right.

Q. (By Mr. Bunn): What did you observe about the wire which you have just denominated bad and poor? What was it which you observed which caused you to say it was bad and poor?

A. Some of the coils were covered with mud and some of them were extremely rusty.

The Court: What was good?

The Witness: They had evidently been dumped in the mud and it had rained on them.

The Court: The good?

The Witness: The good.

The Court: You said good, bad and poor.

The Witness: It was all mixed up together.

The Court: But what was good wire?

The Witness: The black wire was in excellent shape. There was no mud, no rust, clean.

The Court: And the bad was? [1360]

(Testimony of Russell H. Mather.)

The Witness: Muddy and rusty.

The Court: And the poor?

The Witness: Falling apart.

Q. (By Mr. Bunn): And the portion which you say was good was 1 per cent approximately, in your opinion, of the total?

Mr. Dasteel: Just a moment. He never said anything of the kind.

Mr. Bunn: He said the other was 99 per cent.

Mr. Laven: Not galvanized.

Mr. Bunn: He said the other was 99 per cent. All right.

Q. What did you say, Mr. Mather?

A. 99 per cent of it was black.

Q. What was the condition of the barbed wire which you observed at the Marine Base?

A. Good.

Q. Was it black or galvanized?

A. Mostly galvanized.

Q. Was it on pallets or not?

A. On pallets.

The Court: Excuse me, counsel.

The witness up to this moment has used good, bad and poor. We have four coils of wire in the room here. Will you step over to them a moment, please. Perhaps I can get some [1361] notion of what you are talking about.

It has been testified, Mr. Mather, that these four rolls of wire were taken at random from the shipment delivered on the dock consigned to Dulien Steel at Pier A at Long Beach. No. 51 is on the



(Testimony of Russell H. Mather.)

right, Exhibit 52 is the next one, 53 is the next one and 54 is on the left, the black one.

Now can you indicate by pointing to any one of those exhibits what you mean, or do they exemplify what you mean by good, bad and poor?

The Witness: No. 51 and 54 I would say are good rolls.

The Court: And which is bad and which is poor?

The Witness: The remaining two rolls—52 is a bad roll.

The Court: That is 52?

The Witness: Yes.

The Court: Yes?

The Witness: 53 is a bad roll.

I might add I would like to say that there was much wire there in far worse condition than these two rolls.

Mr. Bunn: Meaning 52 and 53?

The Witness: When I say "poor" I mean to me absolutely unusable.

The Court: Was there much wire there that was, as you say, falling apart?

The Witness: In worse shape than these [1362] two.

The Court: Very well. You may resume the stand.

The two middle ones there you say are bad?

The Witness: Yes.

The Court: And the poor is even worse than that?

The Witness: Yes, sir.

(Testimony of Russell H. Mather.)

The Court: Is any one of them poor?

The Witness: Not according to what I saw.

The Court: Not the way you saw those?

The Witness: Not the way I saw the wire.

The Court: Very well. [1363]

\* \* \*

(The question referred to was read by the reporter as follows: "Q. Mr. Mather, did you select for Gonzalez & Blanco in Honolulu any wire and order it from Dulien through Mr. Lacy Hofius?")

The Court: The objections are overruled.

Q. (By Mr. Bunn): You may answer the question. A. Yes.

Q. How much wire did you select and order?

A. Approximately 1500 ton.

Q. What kind of wire did you select and order?

A. Good.

Q. Did you specifically point it out to Mr. Lacy Hofius? A. Yes.

Q. When you pointed it out, was it segregated from other wire? A. Only partially.

Q. To what extent?

A. About 30 per cent was segregated.

Q. Now do you remember when you came back—

The Court: 30 per cent of what? Was this 1500 tons [1366] galvanized or galvanized and black?

The Witness: The 1500 tons was half galvanized and half black.

(Testimony of Russell H. Mather.)

The Court: Was the galvanized wire segregated or segregated by sample?

The Witness: There was very little segregated.

The Court: And likewise the black?

The Witness: Only fairly so.

Q. (By Mr. Bunn): Was it in either one of the two places you have last mentioned, Schofield Barracks and the Marine Base, or was it in both—I mean was part in each?

Mr. Diether: You mean what he selected?

Mr. Bunn: Yes.

The Witness: The galvanized was at the Marine Base, segregated; at Schofield Barracks it was only partially segregated and was black wire.

Q. (By Mr. Bunn): When did you come back to Los Angeles?

A. Sometime in the first part of June.

Q. Were you in Los Angeles on July 26, 1946?

A. Yes.

Q. Did you remain in Los Angeles continuously from then until the end of the year 1946?

A. Yes. [1367]

Q. Do you remember the occasion of the arrival of the SS White Squall from Honolulu?

A. Yes.

Q. When after its arrival did you first see any barbed wire that had come on it?

A. I don't remember the date.

Q. Well, in relation to the unloading of any barbed wire from that ship, when did you first see it?

A. Practically from the beginning.



(Testimony of Russell H. Mather.)

The Court: Does counsel object to the fact that if Mr. Bunn fixes the date of the arrival of the White Squall, is there any dispute about it?

Mr. Dasteel: There is no dispute about it.

The Court: That it arrived July 26?

Mr. John Morrow: We will stipulate it was July 26.

The Court: Very well. [1368]

\* \* \*

Q. Do you know how soon after the arrival of the ship, which arrival was on Friday, July 26, you first saw any wire either on that ship or which had been taken off of that ship?

A. As I recall, it was about five days after the boat arrived that I got on the boat. I may be wrong on that in a day or two, but I don't remember how long.

Q. Were you on the boat before any of the wire was unloaded?      A. Yes, sir.

Q. Assuming that the unloading of the boat, the wire from the boat, commenced on Sunday, the 28th, did you see any of the wire on Sunday, the 28th?      A. No.

Q. You know you weren't there on Sunday?

A. Yes.

Q. Do you know whether or not you were there on Monday, July 29th?      A. I was.

Q. Were you there in the early part of the day?

A. About 7:30 in the morning.

Q. How long did you stay there?

A. Until 6:00 o'clock.

(Testimony of Russell H. Mather.)

Q. At night? [1369] A. Yes, sir.

Q. What did you do while you were there?

The Court: Not everything all those hours?

Mr. Bunn: I was just trying to avoid leading him as I am accused of doing consistently.

The Witness: I watched the unloading of the wire.

Q. (By Mr. Bunn): You were then working for Gonzalez & Blanco? A. Yes.

Q. Did you give any instructions on that day, the 29th?

Mr. Diether: To whom?

Mr. Bunn: To anybody at the dock about the unloading of the wire.

The Witness: Yes.

Q. (By Mr. Bunn): To whom did you give instructions?

A. Transmarine or Marine Terminals, whoever was the terminal operators.

The Court: Go ahead and tell us what happened about unloading wire down there.

The Witness: We had numerous orders for delivery of wire in boxcars—gondolas—and I discussed with the man in charge of the terminal operators at Pier A, with a view in mind of getting the cars and having them pulled alongside of [1370] the vessel for direct unloading, which he did.

The Court: Without going on the dock?

The Witness: Yes, sir, directly from the boat to the cars.

The Court: Yes?

(Testimony of Russell H. Mather.)

The Witness: This they did. I think it was either 10 or 12 cars that were loaded in that manner.

Q. (By Mr. Bunn): On the 29th, or over a period of several days?

A. On an average, four or five cars a day.

Q. Were you there all that time? A. Yes.

The Court: Now we are talking about what happened on this day you were there making the arrangements, or whatever it was. What happened? You talked to the man in charge about having that done and then what else happened?

The Witness: That is all.

Q. (By Mr. Bunn): Did you give any specific instructions about specific wire that should go on gondola cars?

The Court: By "specific" what do you mean?

Mr. Bunn: As distinguished from general instructions.

The Court: As distinguished between galvanized and black, or good, bad, poor, indifferent or what?

Mr. Bunn: Your Honor has put into the question what [1371] counsel won't permit me to put into the question.

The Court: We are trying to find out what happened here, counsel. Let us move along.

Q. (By Mr. Bunn): Mr. Mather, did you give any instructions as to any segregation of galvanized wire from black wire at that time?

Mr. Diether: For loading on the cars?

Mr. Bunn: Yes, sir.



(Testimony of Russell H. Mather.)

The Witness: Merely that the first 10 or 12 cars must be galvanized wire, or a major portion of it galvanized wire, to comply with the orders on hand.

Q. (By Mr. Bunn: Did you watch the actual bringing out of the hold of the ship of the wire which was so brought out that day? A. Yes.

Q. What was the condition of the wire which was so then that day brought out direct from the hold of the ship and put on gondola cars for Gonzalez & Blanco? A. Good.

Mr. Diether: Just a moment. May I hear that question?

(The question referred to was read by the reporter as follows: "Q. What was the condition of the wire which was so then that day brought out direct from the hold of the ship and put on gondola cars for [1372] Gonzalez & Blanco? A. Good.")

The Court: How did that happen? Was there any conversation between you and anybody about it?

The Witness: No, other than that, that I stated that we must have galvanized or a large percentage of galvanized wire in the first 10 or 12 cars.

The Court: To whom did you state that?

The Witness: To the representative of the terminal operators and the supervisor for the Longshoremen's Union.

The Court: And what happened? Did they bring

(Testimony of Russell H. Mather.)

up and put every roll of wire in the cars that came up or did they put some there and some elsewhere?

The Witness: They hit a very good selection of wire down there and by mutual agreement worked that section of wire, figuring that it would be sufficient to fill up the cars on which there was a rush.

The Court: In other words, they took the wire as it came?

The Witness: Yes.

The Court: Out of the hold?

The Witness: Yes, out of that one section.

The Court: During that whole day?

The Witness: For two or three days.

The Court: For two or three days? [1373]

The Witness: Yes, sir.

The Court: Very well.

Q. (By Mr. Bunn): Did they put on the gondola cars for Gonzalez & Blanco any of what you have denominated poor wire? A. No.

The Court: Or bad?

The Witness: No.

Q. (By Mr. Bunn): Did you on any one of those first few days see any wire unloaded onto the dock and placed on the dock?

A. They were unloading. I was only concerned with the cars, I wasn't watching the other.

The Court: Did you see it?

The Witness: Yes.

Q. (By Mr. Bunn): At the same time that that wire was being moved from the ship to the gondola cars for Gonzalez & Blanco? A. Yes.

(Testimony of Russell H. Mather.)

Q. What was the condition as you observed it? Did you observe the condition of the wire which was simultaneously being put on the dock?

A. Not at that time.

The Court: Was it coming out of the same hold in the ship? [1374]

The Witness: No, sir, it was coming out of a hold aft.

The Court: You got your wire——

The Witness: Forward.

The Court: ——forward?

The Witness: Yes.

Q. (By Mr. Bunn): Did you at any time after July 28, which was Sunday, see any chalk marks on the floor of the dock around any piles of wire on the dock?

A. I saw the chalk marks; yes.

Q. What did the chalk marks indicate?

A. Placement of wire for Gonzalez & Blanco and the other for Dulien Steel Company, I think it was.

Q. In other words, the wording “Gonzalez & Blanco” was written in chalk on the dock?

A. Yes.

Q. And the words “Dulien” or “Dulien Steel” were written in chalk marks on the dock?

A. There was a name, I don't remember whether it was “Dulien Steel” or not.

Q. But something other than Gonzalez & Blanco?

A. Right.

The Court: Was it “Londono”?



(Testimony of Russell H. Mather.)

The Witness: I don't think so. [1375]

Q. (By Mr. Bunn): Do you remember how soon in that week, which commenced with Sunday, the 28th of July, you saw those chalk marks for the first time? A. I don't remember when.

Q. When you first saw, as you remember, those chalk marks and the piles of wire designated by them, what was the condition of each separately of those piles of wire?

Mr. Diether: I object to that as indefinite and uncertain.

Q. (By Mr. Bunn): That is——

Mr. Diether: Are you withdrawing the question?

Mr. Bunn: No, I will wait.

The Court: He has not finished yet.

Mr. Diether: I beg your pardon.

The Court: He said, "That is."

Q. (By Mr. Bunn): That is, were the piles which were so separately marked of like or unlike condition? A. Like.

Mr. Diether: Just a moment. May the answer be stricken until I can make my objection?

The Court: The answer may be stricken and you may object. I do not know what he is talking [1376] about.

Mr. Diether: I don't either. That is the objection.

Mr. Bunn: I want to know if there was any distinction in the appearance of those two piles of wire so separated.

(Testimony of Russell H. Mather.)

The Court: Why do you not ask him that?

Mr. John Morrow: I object. There is no foundation laid showing he examined any of the piles.

Mr. Bunn: I asked him if he looked at them, and he said yes.

The Court: The objection is sustained. The answer is stricken.

Q. (By Mr. Bunn): Mr. Mather, how did those piles of wire compare with each other as you observed them?

The Court: In appearance?

Mr. Bunn: Yes.

The Court: Or in size?

Mr. Bunn: No, sir, as to condition of the wire.

The Witness: Similar.

Q. (By Mr. Bunn): Was there good wire, poor wire, bad wire in both piles? A. Yes.

Q. Was there any rusty wire in both piles?

A. Yes.

Q. Was there muddy wire in both piles? [1377]

A. Yes.

Q. To what extent did you yourself supervise the removal of wire for Gonzalez & Blanco? Did you supervise all of it or did somebody else at times supervise the removal of some of it?

A. I was there all the time.

Q. Then you saw all the wire removed from the boat that was removed from the boat?

A. Yes, sir.

The Court: How long did it take to discharge that cargo of wire?

(Testimony of Russell H. Mather.)

The Witness: Either 10 or 12 days all told.

The Court: And you were there every day?

The Witness: Yes.

The Court: Generally supervising the removal and selection of the wire?

The Witness: Yes, sir.

The Court: Very well.

Q. (By Mr. Bunn): Did you cause wire for Gonzalez & Blanco to be selected from any of the piles on the dock as distinguished from direct taking out of the boat?

A. You will have to repeat that, please.

The Court: I think maybe he should reframe it.

Let me ask another question. You were there 10 or 12 [1378] days while they were discharging the cargo of wire for Gonzalez & Blanco?

The Witness: Yes.

The Court: Did they in the meantime discharge the entire cargo of wire?

The Witness: Yes, sir.

The Court: And either on the dock or elsewhere?

The Witness: On the dock except for the first 10 or 12 cars.

The Court: All of it was discharged on the dock except for the first 10 or 12 cars about which you testified which were discharged directly into gondolas?

The Witness: Yes.

The Court: For Gonzalez & Blanco?

The Witness: Yes, sir.

Mr. John Morrow: If the court please, may it be



(Testimony of Russell H. Mather.)

understood that Matson objects to this entire line of testimony on the ground that it is beyond the issues of the complaint as far as Matson is concerned. There is no complaint as to segregation in the complaint.

Mr. Laven: Same objection as far as the Government is concerned.

The Court: The objection is overruled without prejudice to a motion to strike. [1379]

Q. (By Mr. Bunn): Mr. Mather, did you cause to be selected for Gonzales & Blanco——

The Court: Just a moment. How many tons went on in gondolas?

Q. (By Mr. Bunn): How many tons went on in gondolas direct from the ship?

A. Between 250 and 300.

Q. And the balance of Gonzalez & Blanco's wire was obtained from the dock itself?

A. Yes, sir.

Q. And did you supervise that selection?

A. I did.

Q. Did you cause the wire for Gonzalez & Blanco to be selected from any one particular portion of the dock?

Mr. Hubert Morrow: I don't know what counsel means, take it from Dulien's file or Gonzalez & Blanco's file?

The Court: I think that is what he is getting, but it would be quicker to find out if he asked him.

Mr. Bunn: One reason I am going this way is because I am trying to save time on a multiplicity

(Testimony of Russell H. Mather.)

of objections that I would be leading this witness. I figure it would take less time to do it this way than for the court to pass on four objections to each question. [1380]

Mr. Hubert Morrow: On the other hand, it is not understandable what you are talking about.

Q. (By Mr. Bunn): How was the selection made by you for Gonzalez & Blanco's wire?

The Court: The witness has just testified it was put in two piles. Ask him if he took Gonzalez & Blanco's wire from both piles or exclusively from Gonzalez & Blanco's pile

Q. (By Mr. Bunn): Will you answer that question? A. From both piles.

Q. Throughout the entire time of removal?

A. Naturally, we went to Gonzalez & Blanco's pile first, exhausting that pile.

Q. Did you take all of the wire which was in the pile marked Gonzalez & Blanco? A. No.

Q. What did you not take?

A. The wire that we didn't want.

The Court: Which wire didn't you want?

The Witness: The poor wire, the bad.

The Court: The bad?

The Witness: The bad and the poor wire.

The Court: The bad and the poor wire?

The Witness: Yes, sir. [1381]

The Court: You left that then and went over to the other pile and got the rest of it?

The Witness: Yes, sir.

The Court: How much did you leave of the bad

(Testimony of Russell H. Mather.)

and poor wire in the Gonzalez & Blanco pile? In other words, how much did you get from the other pile? Do you remember?

The Witness: I don't recall. We worked so long, it was covering such a long period of time, that it is difficult for me to estimate how much wire we left when we went into the other pile and how much of that we took.

The Court: Well, about how much? Gonzalez & Blanco had an order for how many tons?

The Witness: 1500 tons.

The Court: 1500 tons?

The Witness: That is right.

The Court: And you shipped about 250 tons, you said, on the gondola cars?

The Witness: 300.

The Court: Or 300?

The Witness: Yes.

The Court: That would leave about 1200 tons.

The Witness: That is right.

The Court: About how many tons did you have to get from the other pile to fill your order? Half of it?

The Witness: About 600 or 700 tons. [1382]

Q. (By Mr. Bunn): How much good wire in all did you get? Did you get 1500 tons of good wire?

A. Yes, sir.

Q. Now after the 1500 tons of good wire had been removed, did you observe the condition of the wire which then remained on the dock?

A. Yes.



(Testimony of Russell H. Mather.)

Q. Did you observe the quality of the wire which remained on the dock? A. Yes.

Q. What was the condition of the wire which remained on the dock?

A. Good, bad and poor.

Q. What proportion of that which remained was good?

Mr. O'Malley: I don't think any foundation has been laid for this, your Honor. I want to expedite this trial as much as possible, but I think counsel should lay some foundation for the examination by this witness.

The Court: Overruled.

How much of it was good that was left?

The Witness: About 10 per cent.

The Court: How much of it was bad and how much poor?

The Witness: About 25 per cent bad and the remainder poor. [1383]

The Court: By "poor" you mean worse than bad?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you handle any of the wire which went to Mr. Londono?

A. Naturally.

Q. I mean, did you handle it with your hands?

Mr. Dasteel: Just a moment. I object to that on the ground that the question is not specific. He doesn't say what wire that went to Londono, whether it was after Gonzalez & Blanco or not.

(Testimony of Russell H. Mather.)

The Court: There is no foundation. It does now show he knows what wire went to Londono.

Mr. Bunn: All right. I will clear it up.

Q. Did you handle any of the wire on the dock which did not go to Gonzalez & Blanco?

Mr. John Morrow: I object to that, calling for a conclusion.

The Court: Overruled.

Q. (By Mr. Bunn): I mean with your hands.

A. Yes.

Q. Did you break any of it? A. Yes.

Q. Did you have to make an effort to break it with [1384] your hands or did it break easily?

Mr. O'Malley: If your Honor please, I think this witness can testify without the assistance of counsel. I know we have to get on with this trial, but counsel ought to be able to frame questions which are not leading. Mr. Bunn might as well get on the witness stand and be done with it.

Mr. Bunn: I either have to do it that way or I meet the court's admonition that I should get to the point and be specific.

Mr. O'Malley: We have experienced counsel here who know how to examine a witness.

Mr. Dasteel: I would like to add to Mr. O'Malley's objection and say you can go to any pile of barbed wire and after examining it you can find a piece that you can break with your hands.

The Court: Are you testifying?

Mr. Dasteel: I am making my objection.

The Court: That you can go to any pile?

(Testimony of Russell H. Mather.)

Mr. Dasteel: Any large pile of wire that has been out in the open for several years.

The Court: What do you mean by "large"?

Mr. Dasteel: A thousand pounds.

The Court: Objection overruled.

Mr. Dasteel: In other words, I hope that your Honor isn't going to ask me to break some of that. [1385]

The Court: Objection overruled. Let me hear the question.

(The question referred to was read by the reporter as follows:

("Q. Did you have to make an effort to break it with your hands or did it break easily?")

The Court: The long and short of it is, did it break easily or was it good wire?

The Witness: Yes.

The Court: Some of it broke easily?

The Witness: Yes.

The Court: Did you have to take a pair of pliers and twist it?

The Witness: No.

The Court: You could just break it with your hands?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Mather—

The Court: Excuse me, counsel. That is, the wire that remained on the dock after you had taken all of the deliveries for Gonzalez & Blanco?



(Testimony of Russell H. Mather.)

The Witness: Yes, sir.

The Court: Now, about how much of the wire that remained on the dock after that was in that condition, or appeared to be? [1386]

The Witness: Probably 2 per cent.

The Court: Is that what you call poor wire?

The Witness: Yes, sir; unusable.

The Court: Unusable?

The Witness: That is right.

The Court: And about how much of it was bad wire?

The Witness: Oh, 85 per cent, 80 or 85 per cent.

The Court: And the remainder was good?

The Witness: Yes, sir.

The Court: And the bad wire you considered usable?

The Witness: Yes, sir, requiring processing before it is usable, but usable.

The Court: That is, it would have to be either oiled or pickled?

The Witness: That is right.

The Court: Or something?

The Witness: Yes.

The Court: In other words, the 2 per cent was beyond redemption?

The Witness: Yes, sir.

The Court: And the 85 per cent was usable in its then condition?

The Witness: Yes, sir.

The Court: And the remainder, about 13 per cent, was——

(Testimony of Russell H. Mather.)

The Witness: Good. [1387]

The Court: —good wire?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Mather, after Gonzalez & Blanco had caused to be removed 1,500 tons of the wire from the dock, did they later under contract from Londono take some of that which had remained? A. Yes.

Q. I show you Exhibit for identification No. 42, which is the agreement between Londono and Gonzalez & Blanco dated Octobed 22, 1946, and ask you if you recognize the signature purporting to be that of Thomas Gonzalez. A. I do.

Q. What is the middle initial? A. P.

The Court: What is the difference? Nobody is claiming that that contract was not executed, are you?

Mr. Dasteel: No.

Mr. O'Malley: It is in evidence.

The Court: It is in evidence.

Mr. Bunn: No, it is in for identification only.

Mr. O'Malley: There is no question about the execution of it.

Mr. Bunn: I offer the contract in evidence.

The Court: What is the number? [1388]

Mr. Bunn: No. 42.

The Clerk: It is in evidence, your Honor.

The Court: It is in evidence?

The Clerk: Yes.

(Testimony of Russell H. Mather.)

Q. (By Mr. Bunn): I will ask you if you caused to be made in the office of Gonzalez & Blanco any statement of the quantities of wire which Gonzalez & Blanco purchased from Londono under that contract of October 22, 1946? A. I did.

Q. I show you a document marked No. 48, for identification, and ask you if that was prepared in your office? A. It was.

Mr. Diether: Just a moment. I object to that, if the court please. It is a self-serving statement.

The Court: Overruled. If it was prepared in his office, what is the difference? How can that hurt or help? It is an introductory question.

Mr. Diether: As I understand counsel's purpose, it is merely to show the quantity of wire.

The Court: I know what his purpose is, but he can ask where it was prepared, and it does not make any difference.

Q. (By Mr. Bunn): You say it was prepared in your office? A. Yes. [1389]

Q. Under your direction? A. Yes.

Q. Can you, from that document, tell us how much wire Gonzalez & Blanco purchased from Londono under the contract of October 22, 1946?

Mr. Diether: That is objected to, your Honor.

The Court: Is there any question about that quantity?

Mr. Diether: Yes.

Mr. O'Malley: There is a very considerable question as to the amount. [1390]



(Testimony of Russell H. Mather.)

Q. (By Mr. Bunn): Mr. Mather, was that statement which you have in front of you prepared under your direction? A. Yes.

Q. In the ordinary course of business in the office of Gonzalez & Blanco? A. Yes.

The Court: May I see it?

(The document referred to was passed to the court.)

Q. (By Mr. Bunn): Will you, with the aid of that statement, tell us how many 28-pound coils of wire Gonzalez & Blanco received from Londono under the contract of October 22, 1946?

Mr. Dasteel: Just a minute, before you answer that. I would like to see the exhibit which the court has.

(The exhibit referred to was passed to counsel.)

The Court: While counsel is looking at that, may I not ask you, Mr. Mather, is that statement No. 48, which is before you and which Mr. Dasteel is now looking at, a summary statement taken from the books and records of Gonzalez & Blanco [1391] of the transaction to which it relates?

The Witness: It is.

The Court: It was compiled under your direction, was it?

The Witness: At my request.

The Court: At your request?

The Witness: Yes, sir.

(Testimony of Russell H. Mather.)

The Court: And by the bookkeepers and other people in the regular course of your business?

The Witness: That is right.

Mr. Dasteel: Your Honor please, my objection to this testimony is on the grounds that there is no supporting evidence. This is simply a statement of Gonzalez & Blanco to Londono specifying a number of coils, a number of tons, and an amount of money, but there is no supporting evidence to show that the figures appearing thereon are correct. Therefore I object to it.

Mr. O'Mally: We join in the objection, if your Honor please.

The Court: In connection with that, I doubt not but what you would be entitled to have Gonzalez & Blanco bring their entire books and records up here.

Mr. Dasteel: Not all of them, but some evidence, your Honor.

The Court: Their entire books and records, so that you could pick out the particular items as they are entered from [1392] time to time. The witness has just testified that this is taken from their books and records and is a summary statement of what they contain. He is entitled to testify concerning it and you are entitled upon cross-examination, if you desire, to have them produce their books and records to show it. The objection is overruled.

Q. (By Mr. Bunn): Now before I proceed with further questions on this statement, was there prior to the receipt by Gonzalez & Blanco of wire under

(Testimony of Russell H. Mather.)

the contract of October 22nd taken by Gonzalez & Blanco any wire for experimental pickling purposes?      A. Yes.

Q. Is that wire so taken for experimental pickling purposes included in here?

Mr. Diether: Included in here? You mean in Exhibit 48?

Mr. Bunn: In that Exhibit 48.

The Witness: No.

Q. (By Mr. Bunn): Now did you have any part in the experimental pickling of any wire before the contract of October 22nd was made?

A. Well, I had a part in it. I don't recall the dates.

Q. You did have a part in it?      A. Yes.

Q. Did Gonzalez & Blanco take some tonnage and have it pickled? [1393]      A. Yes.

Mr. Dasteel: Pardon me. Are you now referring to the Londono wire?

Mr. Bunn: Yes.

The Witness: Yes.

Q. (By Mr. Bunn): Who did the pickling?

A. Bernard Epps Company.

Q. Do you know what pickling is when applied to wire?      A. Sure.

Q. What is it?

A. The wire is subjected to a chemical process which removes the galvanization, dirt, rust and extraneous material.

Q. Is that all it does? Does it put anything on it after it is removed?      A. No.



(Testimony of Russell H. Mather.)

Q. In other words, it is a removing and cleaning process? A. It is.

Q. Now, will you take your statement No. 48, and state how many coils—I will withdraw that.

Does that statement, No. 48, show the full quantity in number of coils and tonnage of barbed wire which Gonzalez & Blanco received from Londono under the contract of October 22, 1946? [1394]

The Court: You mean after the contract?

Mr. Bunn: Yes, sir.

The Court: And not under?

Mr. Bunn: After and in accordance with the terms of that contract.

Mr. Diether: I object to that as being indefinite and uncertain.

The Court: It calls for a conclusion if it asks this witness if it was in accordance with the terms. If it calls for a date it does not call for his conclusion. What is your question?

Mr. Bunn: My question is whether or not that statement shows all the wire which Gonzalez & Blanco received from Londono.

The Court: After the date of the contract?

Mr. Bunn: After the date of the contract of October 22.

The Court: And what they did with it and what became of the money?

Mr. Bunn: Yes, your Honor.

The Witness: Yes.

Q. (By Mr. Bunn): Mr. Mather, I notice on that statement under date of November 25, 1946,

(Testimony of Russell H. Mather.)

check No. 35616 for \$1,000. Do you know on what particular account the \$1,000 was paid?

Mr. Diether: That is objected to as it is provided for [1395] right in the contract.

The Court: Let him finish.

Q. (By Mr. Bunn): Was it for any specified number of tons of wire or was it for demurrage as mentioned in the contract of October 22, 1946?

Mr. Diether: The contract speaks for itself. It specifies that he is to pay \$1,000 on account of demurrage charges.

Mr. Bunn: I want to know whether this is the \$1,000 which was so paid.

The Court: Objection overruled.

The Witness: Yes.

Q. (By Mr. Bunn): I notice from the statement, Mr. Mather, that there is this language which I want you to explain, if you will. There appears the figures 838 tons total received, near the top of the statement, and then I read: "Less total number of coils remaining not fit for pickling and unusable and unmarketable now accruing storage charges at Bernard Epps'," etc., and that there are then deducted 2080 coils from the total above of 23,173 coils, and that there are then deducted 104 tons from what is above it, namely, 838 tons. Will you explain why that deduction was made?

A. That amount of wire was remaining at those two cases in such a condition that it couldn't be pickled, [1396] cleaned, or anything done with it.

(Testimony of Russell H. Mather.)

Q. And Gonzalez & Blanco refused to take it?

Mr. Diether: At that time?

Mr. Bunn: At that time.

The Witness: Yes.

Q. (By Mr. Bunn): And refused to take it at \$51 a ton? A. Yes.

Q. Did you subsequently take it? A. Yes

Q. At what price?

A. \$4 or \$4.50, somewhere around in there. I don't recall.

Q. Did you at any time in the spring of 1947, see any of that wire at Lomita?

Mr. Diether: Isn't that already agreed to, that that wire was sold to Gonzalez & Blanco for \$4.50? You put in the agreements here.

The Court: I do not know what is agreed to, counsel. I was under the impression that the matter of the disposition of this wire which remained on the dock after the shipments to South America had been agreed to by everybody.

Mr. Diether: That is correct.

The Court: But just a few moments ago, and before recess, you said there was a very serious dispute about how much [1397] wire Gonzalez & Blanco had gotten, and so forth. So counsel had just as well go ahead and prove his case.

\* \* \*

Q. (By Mr. Bunn): Did you see any of it in the Lomita area? A. Sure.

The Court: Any of the remaining wire, the wire



(Testimony of Russell H. Mather.)

they would not take, is that what you are talking about?

Mr. Bunn: The wire that they wouldn't take at first.

The Witness: Yes. [1398]

Q. (By Mr. Bunn): Did you accompany Mr. Dasteel and Mr. Bunn and anybody else down to the location of somewhere in the Lomita area in the spring of 1947?

A. I met you there. I didn't accompany you.

Q. And you met Mr. Dasteel there?

\* \* \*

A. I don't remember seeing Mr. Dasteel. I remember seeing a representative of Mr. Dulien there.

Q. But you don't remember who it was?

A. No, I don't.

Q. What was the condition of the wire which you there saw in the spring of 1947?

A. Junk.

The Court: How much was it?

The Witness: 104 tons.

The Court: How do you know it was 104 tons?

The Witness: I counted it. [1399]

Q. Where was it, in Lomita?

The Witness: In the Contractors Supply Company, the cleaning and pickling company.

The Court: That is where you had it pickled?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you have pickled in addition to the 25 tons or so for experimental

(Testimony of Russell H. Mather.)

pickling prior to the date of the contract of October 22, any of this wire which you bought from Londono as it is shown on the statement No. 48? After you bought it did you have it pickled?

A. Yes.

Q. What did it cost you to have it pickled?

Mr. Diether: I object to that as incompetent, irrelevant and immaterial, not bearing on any issue involved in this case.

The Court: Overruled.

Q. (By Mr. Bunn): What did it cost you to have it pickled?

A. The prices varied from \$30 to \$44 or \$43 a ton. I could explain that due to the fact that the pickling concerns after an initial run found their expenses were so great that they couldn't continue at those prices. Bernard Epps increased his price to \$30, then stopped because of labor trouble. Then we shipped it over to the Contractors Supply [1400] Company, who continued with the pickling and I think the total cost was around \$40 or \$43 a ton at Contractors.

Q. And you paid as high as that last mentioned figure for the pickling of some of it?

A. Yes, pickling and costs, that is, hauling and labor costs.

Q. Do you remember the manner in which there was transmitted to the Citizens Bank the payments which are shown in the lower left-hand corner of that statement No. 48?

(Testimony of Russell H. Mather.)

The Court: By the way, did Gonzalez & Blanco transmit the payments to the Citizens National Bank that it indicated on Exhibit 48?

The Witness: Yes, sir.

The Court: On or about the time indicated there?

The Witness. Yes, sir.

The Court: And in or about those amounts?

The Witness: Yes, sir.

The Court: And your question is, in what manner?

Mr. Bunn: Yes. I want to know whether they were transmitted direct to the bank or to Mattoon & Company and from Mattoon & Company to the bank.

The Witness: I think the first two or three payments were made to Mattoon and the remainder were made to the bank.

The Court: Directly?

The Witness: Yes, sir. [1401]

The Court: By check from Gonzalez & Blanco?

The Witness: Yes, sir.

Q. (By Mr. Bunn): And the checks were payable to the Citizens National Bank?

A. That I couldn't say. I don't know.

Q. Do you yourself have any explanation for the language opposite the payment date of March 31, 1947, which reads "Draft collection by Citizens National Bank"?

A. Yes.

Q. What is your explanation?

A. We made a sale of some wire to a firm, I



(Testimony of Russell H. Mather.)

believe in Mexico, and made an arrangement with the Citizens National Bank where they would apply the profit, our profit, from that transaction against the obligation due them on this wire.

Q. On the Dulien contract?

A. On Londono.

Q. I mean on the Londono contract?

A. Yes.

Q. And in that manner the \$7,454.46 payment was made? A. Yes.

Q. Now, Mr. Mather, had Gonzalez & Blanco prior to July 26, 1946, purchased and sold any barbed wire in Los Angeles County, California?

Mr. O'Malley: What is the purpose of this line of [1402] inquiry?

The Court: I have a suspicion that he is probably laying a foundation upon which he expects to extract expert testimony. Is that it?

Mr. Bunn: I am going into the value, the reasonable market value of the barbed wire.

The Court: That is, his expert testimony concerning it?

Mr. Bunn: Yes, sir.

The Witness: Yes.

Q. (By Mr. Bunn): Did you after July 26, sell any other barbed wire besides that which you bought from Londono?

A. Did you say after?

Q. Yes, after July 31.

The Court: During the year 1946, did you, your firm and you in connection with it, deal in the buying

(Testimony of Russell H. Mather.)

and selling of barbed wire, galvanized and otherwise, in and about Los Angeles County, California, during the whole year?

The Witness: Yes.

Q. (By Mr. Bunn): Mr. Mather—and answer yes or no, please, to this question—do you know what was the reasonable market value in Los Angeles for export to South America in ton lots in August, September, October and November, 1946, of unused Government surplus barbed wire, 12 and 12½ gauge, two-strand with [1403] 4 point barbs spaced at 3 inch and 4 inch intervals in good condition, black and galvanized?

Mr. Laven: Just a moment. The Government objects on the ground that it is for export. The market value would be the reasonable value in the United States or in Los Angeles County, not for export purposes.

The Court: Overruled.

Mr. John Morrow: Matson joins in the same objection. The complaint alleges the value in Los Angeles County, it doesn't allege for export.

The Court: Objection overruled.

Mr. Dasteel: I join in the objection.

Mr. Diether: The Bank objects on the ground that there is not a proper foundation laid, and on the further ground that the question includes "in good condition" and there is no such specification in the contract between Dulien and Londono.

Mr. John Morrow: We add that to our objection.

(Testimony of Russell H. Mather.)

The Court: I do not know that there is sufficient foundation laid for the question. It has not been shown that he knows or has an opinion as to the market value.

Mr. Bunn: I haven't yet asked him what it was.

The Court: The question is whether or not he has an opinion as to the market value.

Mr. Bunn: I will go into that. [1404]

The Court: The market value of wire located in Los Angeles County for export to South America of the description you gave.

Q. (By Mr. Bunn): I want to ask you some more questions then in order to lay a foundation.

Do you know how much barbed wire Gonzalez & Blanco sold in the year 1946 in all?

A. I don't know without looking at the records.

The Court: About how much would you say?

The Witness: Between 3,000 and 4,000 tons.

Q. (By Mr. Bunn): Did you buy some of it from somebody other than Dulien? A. Yes.

Q. And other than Londono?

A. Yes.

Q. Did you make inquiries beyond the boundaries of the state of California for the ascertainment of——

The Court: I think that that is an appropriate question on cross-examination.

Mr. Bunn: All right, sir.

Q. Do you have an opinion as to what was the value, the reasonable market value, for export in ton



(Testimony of Russell H. Mather.)

lots of wire as I described it in my original question? [1405]      A. Yes.

Mr. Diether: Same objection.

Mr. John Morrow: Same objection.

The Court: During the period July and August, 1946?

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. John Morrow: If the Court please, the question was subsequent to July.

Mr. Bunn: I said July and August and September and October and November. I can take it month by month, if necessary. I thought I would save time.

Q. In August of 1946?      A. Yes.

The Court: During those periods, do you have an opinion as to the fair market value?

The Witness: Yes, sir.

The Court: Did it change between July, August, September and October, that is, the fair market value at Los Angeles for wire in ton lots to be exported to South America?

The Witness: No.

The Court: All right.

Q. (By Mr. Bunn): What was that fair market value for black wire?

Mr. Diether: My objection goes to the fact that the question includes wire in good condition, as I have objected [1406] to before.

The Court: Overruled.

(Testimony of Russell H. Mather.)

Mr. Diether: May that objection go to all this line of testimony?

The Court: Surely.

Mr. John Morrow: And the same as to Matson?

Mr. Laven: And the same on behalf of the Government?

The Court: Yes, and Dulien.

Mr. Dasteel: And Dulien.

The Court: Overruled.

Q. (By Mr. Bunn): What was that for black wire? A. \$120 to \$140 a ton.

Q. F.o.b. Los Angeles? A. No, delivered.

The Court: Delivered to South America?

The Witness: Mexico, South America, Central America.

Q. (By Mr. Bunn): What was the value of galvanized? A. \$160 to \$180 delivered.

The Court: And your use of the word "good" there corresponds to your testimony as previously given about good, bad and poor?

The Witness: Yes, sir. [1407]

Q. (By Mr. Bunn): Do you know whether or not there was available in the month of August or the month of September, and so forth, 1946, good galvanized wire of the description I have just been interrogating you about in Southern California?

\* \* \*

Q. Other than that which you obtained as good wire from Dulien? A. I couldn't find any.

Q. Did you try? A. Yes.

The Court: How about black wire?

(Testimony of Russell H. Mather.)

The Witness: I couldn't find any.

The Court: How long had you been trying?

The Witness: Every 30 days.

The Court: Beginning when?

The Witness: Beginning around February or March of 1946.

Q. (By Mr. Bunn): And you went to Honolulu and searched for some, didn't you?

A. No. [1408]

Q. Were you over there on something else?

A. Specifically.

The Court: You mean you were there for something else specifically?

The Witness: No, this one wire specifically.

The Court: You went over there specifically in connection with this wire?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did your search for barbed wire extend beyond the boundaries of the state of California?

A. Yes, sir.

Q. To what ends of the earth did it go?

A. To the east coast of the United States.

Q. You say most of the United States?

A. East coast of the United States.

Q. Mr. Mather—answer yes or no—do you know whether or not there was anybody in Southern California who in the last six months of 1946 was willing to pay any more than \$51 per ton for any of the wire which you bought from Londono in the condition in which it was when you bought it? [1409]



(Testimony of Russell H. Mather.)

The Witness: I don't know.

Q. (By Mr. Bunn): You mean you don't know anybody who would? A. I don't know.

The Court: Mr. Mather, at that time was there a general buyers' and sellers' market for barbed wire to be pickled in this community?

The Witness: No, sir.

Q. (By Mr. Bunn): Mr. Mather, do you know exactly how much wire Gonzalez & Blanco received from the White Squall under bill of lading LA-22, which was the bill of lading issued to Gonzalez & Blanco? A. Approximately 1,500 tons. [1410]

\* \* \*

Q. Do you know approximately when Gonzalez & Blanco completed the removal of their wire under their bill of lading from Pier A at Long Beach as distinguished from any of [1411] that they bought from Londono?

A. September or October, sometime around in there.

The Court: I am at a loss now, Mr. Mather. I had the impression that the unloading took 10 or 12 days.

The Witness: Yes, sir.

The Court: And then it remained on the dock and it took you several weeks or a month to——

The Witness: About 60 days.

The Court: ——about 60 days to take delivery from the dock?

The Witness: Yes, sir.

\* \* \*

(Testimony of Russell H. Mather.)

Cross-Examination

By Mr. Dasteel:

\* \* \*

Q. Now drawing your attention to the four rolls of wire to my right in the courtroom and to the left of his [1412] Honor, the judge, would you say that each of the four rolls there were usable?

A. Yes.

Q. Now you testified too that you met Mr. Lacy Hofius in Honolulu and you made a selection of wire. Now just what did you mean by a selection? Was it a physical selection? Did you go to the barracks and point out each roll of wire, or did you sit down with Mr. Lacy Hofius and on paper tell him what you wanted? Just tell us how you made the selection.

A. We went to the Marine Corps Barracks and there was a lot of wire which was already on pallets stacked up. We went over that wire very carefully as best we could on the outside and around the piles. He agreed upon my request that that wire would be shipped first to us of the total of 1,800 tons which we purchased. That was the first lot to go out.

We went from there to Camp Schofield. At Camp Schofield we saw some wire on pallets, others in piles. We went over the wire that was on the pallets very carefully, I pointing out to Mr. Hofius the type of wire which we wanted. He agreed that we should get that type of wire in sufficient quantities from Schofield.

The wire at the other location, which I am unable

(Testimony of Russell H. Mather.)

to clearly identify, we decided to skip. It was small in quantity and the good wire there was insufficient to make it worth while. [1413]

Q. How did you assure yourself that the wire that you pointed out at these various places that you have just testified to where the wire was located, how did you assure yourself that that particular wire was moved to the dock ready for shipment and loading on board the White Squall?

A. May I, rather than answering that question, lead up to that?

The Court: He said "how." That gives you a pretty broad latitude.

The Witness: We had an original shipment of 300 tons which was to be made from Honolulu on the first available boat and was delivered to the dock to the boat and delivered to Los Angeles. The quantity and the quality were exactly in accordance with the description of the wire that I had given Mr. Gonzalez and being located at the Marine Corps Barracks.

The Court: When was this shipment now?

The Witness: The shipment I think was in June. We felt that we could completely rely upon receiving deliveries in accordance with our contract after the original shipment. [1414]

\* \* \*

Q. Did you see the wire on the dock at Honolulu before it was loaded aboard ship? A. No.

Q. This wire was sold to you, was it not, by Dulien f.o.b. the dock at Honolulu? A. Yes.



(Testimony of Russell H. Mather.)

Q. And you arranged for the shipping from Honolulu to Los Angeles yourself? A. Yes.

Q. Do you recall the first day that you saw wire aboard the White Squall when it arrived at the Long Beach pier?

A. I recall the day but not the date.

Q. Didn't you testify that it was on the 30th of July?

A. I testified approximately. It was on a Monday.

Q. You went aboard the ship? A. Yes.

Q. And did you go down into the hold where the wire was stored? A. Yes, once. [1415]

\* \* \*

The Court: One was forward and one was aft? There were two holds on that ship?

The Witness: No, there were four holds but they were all full of wire.

The Court: The whole boat was full of wire?

The Witness: Yes, sir. [1416]

\* \* \*

Q. I will bring you back now into the hold of the ship, Mr. Mather, and ask you what you observed in connection with wire that was stored aboard ship as to its segregation. Was any of it marked for Gonzalez & Blanco? A. No.

Q. Now did you inquire of anybody aboard ship in regard to segregation? A. No.

Q. You testified that you gave instructions for

(Testimony of Russell H. Mather.)

unloading on four gondolas, railroad cars of wire——

The Court: It was more than four. He said three or four a day.

Mr. Dasteel: Three or four a day.

Q. Did you instruct them to load galvanized wire or black wire? A. Galvanized. [1418]

Q. Only galvanized?

A. All galvanized or the greatest majority of galvanized, is what our order called for.

Q. What was loaded on the first few cars, all galvanized or was it mixed?

A. 99 per cent galvanized.

Q. And 1 per cent black? A. About.

Q. In other words, out of every 100 rolls there was one roll of black? A. That is right.

Q. How was this wire unloaded?

A. How was it unloaded?

Q. Yes, exactly what happened? Was it unloaded by the Marine Transportation Company? Who lifted the wire out of the hold of the ship and hoisted it alongside the dock, what company?

A. I think it was Marine Terminals.

Q. Marine Terminals?

A. Whoever were the terminal operators for that dock.

Q. Did you see them do that? A. Sure.

Q. And did you direct them as to which hold of the four holds in the boat that they should lift the wire from? A. No, sir. [1419]

Q. In other words, that was their option, as to

(Testimony of Russell H. Mather.)

how they would remove it from the boat, as far as you know?

A. They opened the hatches and the hold and said, "We are going to start"—they had started—"This is as good a place to work as any," so they started in there and worked.

Q. Was someone down in the hold carrying out your instructions to make this selection?

A. No, not exactly. They weren't working on my instructions. In this hold there was a section of wire that looked to me to be particularly good and desirable for these orders that we had. I asked the supervisor of the longshoremen, the stevedores, if they could please load as much of that section of wire in the cars as possible, as we were most anxious to get these orders filled.

They agreed, and they said they would be glad to, and did.

Q. In other words, from your observation in one of the holds there was a stack of wire that looked good to you and you told them to unload that first, is that it?      A. That is right.

Q. And I believe you testified that in the four holds there were several thousand tons or more tonnage than you had purchased?

A. On the boat.

Q. You testified you purchased 1,500 [1420] tons?      A. Yes, sir.

Q. And you observed four or five thousand tons in the hold there?

Mr. Bunn: He didn't so testify.



(Testimony of Russell H. Mather.)

The Witness: I approximated the figures. I don't know what was there.

Q. (By Mr. Dasteel): What was your approximation of the tonnage you saw in the four holds?

A. Between 3,500 and 4,000 tons on the whole boat.

Q. Now at the time you were unloading wire for Gonzalez & Blanco, did you see any other parties unloading wire for Londono?

A. I wouldn't know.

Q. Did you see any of this wire from the boat being unloaded other than that which was being unloaded for Gonzalez & Blanco?

A. Yes, sir.

Q. You did? A. Yes, sir.

Q. And where was that placed?

A. On the dock.

Q. Any particular place on the dock?

A. In two sections.

Q. Was it marked? [1421]

A. The sections were marked.

Q. A section marked "Londono" or "Dulien"?

A. I don't recall. There was a name, and there was a section marked "Gonzalez & Blanco."

Q. You testified there were two piles on the dock. Wasn't one marked with chalk "Gonzalez & Blanco"?

A. Yes.

Q. And wasn't there another pile marked "Dulien"?

A. I said it was marked with a name. I don't recall what the name was.

(Testimony of Russell H. Mather.)

Q. And you testified that you instructed your men to unload, to take from both piles?

A. We worked our pile first.

Q. Yes, but thereafter you didn't entirely deplete your pile before you asked them to unload from the other pile, isn't that correct?

A. That is right.

Q. By what authority——

A. Not unload, load.

Q. What is that? A. Not unload, load.

Q. All right, load.

By what authority did you take wire from the dock other than which was intended for your company?

A. By authority of—I think it was the Maritime [1422] Commission, although I am not sure. I received——

The Court: The War Shipping Administration?

The Witness: I think it was the Maritime Commission.

The Court: You received what?

The Witness: I received word from the Terminal operators that I could proceed and select wire from other piles to complete our order.

Q. (By Mr. Dasteel): Who in particular gave you this permission, do you recall?

A. A Mr. Applegate informed me that he had been informed that such permission should be given us.

The Court: Mr. Appelgate is connected with——

The Witness: He was the foreman for the Terminal operators on the dock.

(Testimony of Russell H. Mather.)

The Court: And thereafter did you take from different piles?

The Witness: I took the best I could get.

The Court: From any pile?

The Witness: Any pile and all piles.

Q. (By Mr. Dasteel): Referring again to Exhibit No. 48, you have testified that several tons were purchased by you from Londono under the agreement referred to at \$51 a ton, and then there was left over some wire that they couldn't pickle and you [1423] purchased that at \$4.50 a ton?

A. That is right.

Q. Then there was some more left, was there not?

A. Not that I know of.

Q. Do you know whether or not all of the tonnage that was delivered to Lomita for pickling was eventually pickled, all of it?

A. All except that that remained.

Q. Remained where?

A. At Lomita, which we purchased at \$4.50.

Q. Now what was the name of the firm that did the pickling? I believe you referred to it.

A. Contractors Supply Company.

Q. Contractors Supply Company?

A. That is right.

Q. Did your company, Gonzalez & Blanco, remove all of the wire from the Contractors Supply Company? A. Yes, sir.

Q. Did they leave some debris, some scrap, there, the ones that you testified you could break with your fingers, that type? A. The 104 tons.



(Testimony of Russell H. Mather.)

Q. They left 104 tons?

A. Well, eventually it all went.

The Court: You mean it all came back to you? [1424]

The Witness: Yes, sir.

The Court: Did they finally abandon any there? That is what you are getting at?

Mr. Dasteel: Yes.

The Witness: Not that I know of. I mean, the Contractors Supply Company could tell you whether it was one or two coils or scrap that was left around, but I don't know because I didn't stay there.

Q. (By Mr. Dasteel): In any of this wire that you handled for or purchased for Gonzalez & Blanco, was there any scrap left over that couldn't be used at all or sold?

A. The 104 tons which was sold as scrap.

Q. Which was sold as scrap?

A. Yes. [1425]

\* \* \*

May 4. 1950

GEORGE M. STEPHENSON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please. Will you state your name, please, sir?

The Witness: George M. Stephenson.

The Clerk: And your address, please?

The Witness: 413 West 7th Street, San Pedro, California.

(Testimony of George M. Stephenson.)

Direct Examination

Q. (By Mr. Bunn): Mr. Stephenson, you are a lawyer licensed to practice and are practicing in the state of California? A. I am.

Q. Your office is in San Pedro?

A. Yes, sir. [1428]

Q. Did you in 1946 act as attorney in any matter for Gonzalez & Blanco? A. Yes, I did.

Q. Was that service by you in connection with the barbed wire transaction arising out of a bill of lading from Dulien Steel Products?

A. Yes, it was.

Q. Did you in the month of August, 1946, in connection with that matter have any contacts with Matson Navigation Company? A. Yes, I did.

Q. With whom in the office of Matson Navigation Company?

A. As I recall, it was a man by the name of Mr. Banning.

Q. Had you been theretofore acquainted with Mr. Banning? A. No, I had not.

Q. Now, do you remember the occasion of your first communication with or from him in that regard? A. Yes, I do.

Q. Independently of any documents do you remember when it was in relation to the first day of August, 1946?

A. No, not without the use of a document.

(Testimony of George M. Stephenson.)

Q. Did you personally confer with Mr. Banning face to face?      A. Yes, I did. [1429]

Q. In their Los Angeles office?

A. Yes, I did.

Q. Was that face-to-face conference before or after the writing of any letter or letters from you to Matson?

A. Before the writing of the letter.

Q. I have just shown counsel a document as to the existence of which I had no knowledge until last night, even after I had made arrangements for this witness to come here. Is that not correct, Mr. Stephenson?

A. That's right. I didn't remember that the letter existed until I examined my file late last night.

Mr. Bunn: I intended to show this to counsel earlier, but Mr. Stephenson was unfortunately delayed and just got here about the time court opened so that I hadn't had a chance to do it.

Q. (By Mr. Bunn): While counsel are examining the document, if they don't mind I will ask you if anybody else was present at the conference which you had with Banning in Matson's Los Angeles office before the writing of the letter?

A. Yes.

Q. Who else was present?

A. I believe Mr. Grinstein was.

Mr. Hubert Morrow: A little louder, please.

The Witness: A Mr. E. S. Grinstein, but I don't remember from my recollection the presence of anybody except from the [1430] letter.



(Testimony of George M. Stephenson.)

Q. (By Mr. Bunn): That is the Mr. Grinstein of Dulien? A. Yes.

Q. Do you know how long before the letter was written the conversation took place?

A. It was the day before.

Q. Did you have any documents in your possession bearing on the Gonzalez & Blanco purchase when you were at that conference?

A. I don't recall that. I may have had a copy of the bill of lading, but I would be guessing.

Q. Prior to that conference were you acquainted with a Mr. Ball of the War Shipping Administration office in San Francisco?

A. I had a telephone acquaintance with him. I dealt with him on the telephone.

Q. Arising out of one or more than one telephone contact prior to that time?

A. Arising out of more than one, many more than one telephone conference.

Q. You knew his voice on the telephone?

A. Yes.

Q. Mr. Stephenson, I show you——

The Clerk: Let me have that and mark it, please.

The Court: 58, for identification. [1431]

(The document referred to was marked Plaintiff's Exhibit 58, for identification.)

Mr. Diether: 58, your Honor?

The Court: 58. What is the date of it?

Mr. Bunn: August 9, 1946.

The Court: August 9th?

(Testimony of George M. Stephenson.)

Mr. Bunn: Yes, your Honor.

Q. (By Mr. Bunn): I show you what purports to be a carbon copy of a letter on your letterhead, that is, the letterhead of Loucks, Phister, Baker & Stephenson law offices at 413 West 7th Street, San Pedro, California, dated August 9, 1946, directed to Matson Navigation Company, 550 South Grand Avenue, Los Angeles, California, and ask you if you have ever seen that actual document before.

A. Yes, I have.

Q. What is it, Mr. Stephenson?

A. It is a copy of a letter that I wrote to the Matson Navigation Company on——

Mr. John Morrow: We can't hear you.

The Witness: I am sorry. It is a copy of a letter that I wrote to the Matson Navigation Company on August 9, 1946, and which I delivered personally to the Matson Navigation Company, by delivering it to Mr. Banning at 550 South Grand Avenue, and it is receipted for by Mr. Banning of the Matson Navigation Company. [1432]

Q. (By Mr. Bunn): And the date of the receipt form on the bottom of the second page is what date?

A. August 9, 1946.

Q. And did you see Mr. Banning sign that receipt?

A. Yes, I did.

Q. Now, does that letter refresh your memory as to any of the conversation which took place in Matson's office on the day before, as you have [1433] testified?

(Testimony of George M. Stephenson.)

The Witness: I have already refreshed my recollection, and I now remember the substance of the conversation and the fact that I had the conversation.

Q. (By Mr. Bunn): Will you tell us what the conversation consisted of, that is, what Mr. Banning said to you and what you said to Mr. Banning?

A. I can only tell you in substance, but I told Mr. Banning that I represented Gonzalez & Blanco and—— [1434]

Mr. Bunn: You will have to speak loudly. The acoustics in here are very bad.

The Court: And if you will stand back there, he will talk to you.

Mr. Bunn: Thank you.

Mr. John Morrow: Pardon me. Could you remove the letter from the witness? He said he has already refreshed his recollection.

Mr. Bunn: The witness has put the letter on the judge's desk.

The Witness: That was the first time I met Mr. Banning, and I introduced myself and told him I represented Gonzalez & Blanco, and, in substance, I told him that our clients had made contracts for the sale of this wire.

Mr. Laven: Just a moment. I don't believe the entire foundation has been laid, as to where the conversation took place.

The Court: Yes. It was at Grand Avenue, and Grinstein was present with him, and it was the day



(Testimony of George M. Stephenson.)

before the date of the letter of August 9th, which would make the conversation on August 8th.

Mr. Laven: All right.

The Witness: I told him our client had made contracts for the sale of the wire, and that we had to get that wire off the dock down there at Long Beach, and that we wanted [1435] good wire. And he told me that—he said, “As you already know,” or something to that effect, “the wire is mixed.” “It became mixed in loading, and there is another principal involved who expects wire,” and he said, “and we are not going to let you take all good wire. You can take the amount of wire that your bill of lading calls for, but you have to take it without regard to type or condition.”

And I told him that we wouldn't do that, that we wanted good wire, and we wanted the kind of wire our bill of lading called for. That's all I remember of the conversation.

The Court: What did he say then?

The Witness: I don't think he said much of anything else. I know he didn't promise to comply with our demands. But one other thing I recall about that conversation. He told me that—or, I asked him whether or not there was any way that the Matson Navigation Company could determine which wire belonged to which person, and he told me, no, there was not, that the wire was not tagged or marked or identified in any way so that they could determine which wire was to go to which. And that's all I remember of the conversation.

(Testimony of George M. Stephenson.)

Q. (By Mr. Bunn): Did Mr. Grinstein participate in that conversation by saying anything?

A. Well, if he did, I don't now remember.

Q. That is all on August the 8th?

A. Yes, sir. [1436]

Q. Now, what, if anything, did you do in regard to the Matson Navigation Company the next day?

A. Well, I wrote a letter to Matson Navigation Company.

Q. Is that the letter I have shown you a copy of?

A. Yes, a copy of it. I went to the Matson Navigation Company at 550 South Grand. I went to the Matson Navigation Company at 550 South Grand, saw Mr. Banning, and delivered him the original of the letter, and asked him to receipt on the copy of the letter.

Q. Was there anybody else present in that conversation besides you and Mr. Banning?

A. I don't believe so.

Q. Do you remember whether it was morning or afternoon?

A. I think it was right about noon.

Q. Now, did you thereafter have any conversation with anybody in the War Shipping Administration office——

A. Yes.

Q. ——at San Francisco, about the same transaction?

A. Yes, I did. [1437]

\* \* \*

Q. (By Mr. Bunn): How soon thereafter did you have your first contact with the War Shipping Administration on this transaction?

(Testimony of George M. Stephenson.)

A. Well, I am not certain. I can only guess that it was about a week later. It may have been a few days later.

Q. And how was that contact made?

A. Mr. Ball called me.

Q. And what conversation ensued between you and him on the phone then, that first time, as distinguished from any subsequent ones, if there were any?

A. Well, may I make an explanation?

Q. The witness can always explain his answer, I think.

A. I talked with Mr. Ball on perhaps five, maybe ten occasions.

Q. About this transaction?

A. About this transaction, and I don't remember any conversation that I had with him in any one of those telephone conversations, except that I remember the last one or two conversations that I had with him. I know what we talked about, and I know what he told me in the last conversation [1438] but we were talking about this wire business all the time.

Q. Are you able to give the substance of the conversations earlier than the last, even though you are not able to distinguish the one conversation as to time from the one that followed it? A. Yes.

Q. All right. What was the substance of those conversations, prior to the last?

A. That my letter had reached his desk.

Q. Did he identify the letter of August 9th?



(Testimony of George M. Stephenson.)

A. Well, I don't know whether he identified it in that way, but I had called upon Matson Navigation Company in the letter to give us some sort of answer, and to tell us what they were going to do.

Q. Had you written any other letter between your August 8th conference with Mr. Banning and the telephone conversations you are talking about now? A. No, sir, I had not.

Q. All right.

A. Mr. Ball told me he represented the War Shipping Administration, and he identified himself as the Mr. Ball I had dealt with previously, and at that time he was with the law firm of Thatcher, Jones & Casey of San Francisco. Then we discussed the wire problem. I don't remember what we said in the first part of any conversation, but sometime along the [1439] line, and it probably was in the first conversation, I told Mr. Ball my clients had an order bill of lading that called for so much wire in good condition, and that we expected to have just that much wire in that condition. And I don't remember what he said to that, but later on I cited some cases to him. I remember citing him the case of Carso, reported in 46 Fed. 2d, which is a case on an order bill of lading or a bill of lading. Finally Mr. Ball called me—no, I am losing the sequence. I told him that, as I saw it, he was going to have two law suits, because there were two people involved in the wire on the dock at Long Beach, and that, as I saw the situation, that he would be much better off to have one law suit instead of two, and that I

(Testimony of George M. Stephenson.)

figured that we would be a lot tougher to handle than the other principal would, because we had an order bill of lading. And in the last conversation I had with him, he called me and said, "I have instructed the Matson Navigation Company to let your clients go in and pick their wire. So go ahead."

Q. And did your clients go ahead and do so?

A. Well, I told them to, and I haven't heard any complaints from them since, so I assume they did.

Q. Did you thereafter—no—did you at any time after August 9, 1946, the date on which you received the receipt from Mr. Banning for the original of the letter, have [1440] any personal conversation with Mr. Banning? A. Not that I recall.

\* \* \*

Mr. Bunn: Oh, I beg your pardon. I want now to offer the letter in evidence, and the receipt form by Mr. Banning.

\* \* \*

The Court: The subsequent conversations the witness has testified to with Mr. Ball, and the form of the letter being a demand takes it out of the rule for the purpose of refreshing the witness' recollection. The objections are overruled, and the document is admitted.

(The document, heretofore marked Plaintiff's Exhibit 58 for identification, was received in evidence.) [1441]

\* \* \*

(Testimony of George M. Stephenson.)

Cross-Examination

By Mr. John Morrow:

Q. Mr. Stephenson, you had this conversation with Mr. Banning on about August 9th, 1946. That was the date you said, didn't you?

A. No, I said August 8th.

Q. August 8th. Did he inform you to the effect that he could do nothing, that is, Matson could do nothing without consulting the War Shipping Administration?

A. I don't remember, sir, whether or not he told me that, but I have refreshed my recollection to this extent. He told me that Matson Company was the agent for the War Shipping Administration, as I recall.

Q. Did he mention the words "berth agent"?

A. Well, I don't remember.

Q. But you do recall that Mr. Banning did state that Matson was the agent for the War Shipping Administration?      A. I do recall that.

Q. Does that refresh your recollection as to whether Mr. Banning said, in substance, to you that Matson would have to consult the War Shipping Administration before replying to your demands?

A. I don't recall that, sir, and if you want an explanation—I don't believe that he told me that. If you would like an explanation, I will give it to you. [1442]

The Court: Do you desire to explain your answer—



(Testimony of George M. Stephenson.)

The Witness: Yes, I do.

The Court: —in order that your testimony will speak the truth?

The Witness: Yes. I don't believe Mr. Banning told me that, but the only recollection I have for that belief is because I remember being very astonished to have Mr. Ball of the War Shipping Administration in San Francisco be the first one to respond to my letter.

\* \* \*

Q. (By Mr. John Morrow): When you talked to Mr. Ball on the phone in one of these conferences you mention, he informed you, did he not, that the War Shipping Administration was deciding or was making the decision as to the demands made by you in your letter of August 9th?

A. Well, sir, I don't believe he stated it in just that way. I had the impression that the War Shipping Administration was involved in determining what they were going to do with us with our wire.

Q. That was the impression you had at the time you [1443] talked to Mr. Ball? A. Yes.

Q. Your impression was never changed in that regard at any other date? A. No.

Q. You got that impression from whatever Mr. Ball told you? A. Yes.

\* \* \*

(Testimony of George M. Stephenson.)

Cross-Examination

By Mr. Laven: [1444]

\* \* \*

Q. Did you have any knowledge that it was shipped in one large—that there was other wire shipped by Dulien, which included the Gonzalez & Blanco shipment?

A. Well, my understanding was that all of this wire that was on the dock in Long Beach all arrived in the same ship.

Q. And in addition to the amount of wire that was shipped for Gonzalez & Blanco, do you know how much other wire was shipped on the same vessel?

A. I don't know that. I went down to the dock, and it looked like acres of wire to me. [1445]

\* \* \*

Q. Now, did you see the wire down on the dock.

A. Yes, sir.

Q. Did you see any marks or tags on it—any tags two inches high marked “Gonzalez & Blanco” on either wire?

A. Well, I didn't see any tags on the wire. Of course, I didn't examine the whole pile.

Q. Did you see any markings of any kind identifying the wire?

A. I don't believe I did, but when I went down to the dock to examine the wire, I was looking—I was primarily interested in determining whether or not there was any marking on the wire which

(Testimony of George M. Stephenson.)

would indicate that the wire belonged to Gonzalez & Blanco.

Q. Did you find such indication?

A. I don't believe I did.

Q. Well, do you recall? Can you refresh your recollection, and tell us whether you did or not?

A. All I have is a belief. I don't believe I did, sir. [1446]

\* \* \*

Q. (By Mr. Laven): Didn't you testify on direct examination that Mr. Banning said the wire was not tagged or identified in any manner?

A. I testified that Mr. Banning told me that there was no marking or tagging on the wire to indicate which wire would belong to Gonzalez & Blanco and which wire belonged to the other principal involved.

Q. Now, in your conversation with Mr. Ball, you told him that you had a clean order bill of lading, did you not? A. Yes, I did.

Q. And that he told you in reply to that, when he finally gave you an answer, that because you had the clean order bill of lading that you had a right under the bill of lading to select what the bill of lading called for?

A. Well, I think he felt that was the only way out of the difficulty. The bill of lading didn't get—

Q. I am asking just what he said, not what he felt, sir. I am asking what he told you.

A. Now, repeat your question. [1447]

Mr. Laven: Will you read the last question, please?



(Testimony of George M. Stephenson.)

(The question referred to was read as follows: "Q. And that he told you in reply to that, when he finally gave you an answer, that because you had the clean order bill of lading that you had a right under the bill of lading to select what the bill of lading called for?")

The Witness: No, he didn't tell me that we had any right to make any selection.

Q. (By Mr. Laven): He didn't tell you that?

A. No.

Q. What did he tell you?

A. He said that we were entitled to have what the bill of lading called for, so much wire in good condition, and he said, "You may go select it." But I don't believe he said we had a right to make a selection. [1448]

\* \* \*

### RUSSELL H. MATHER

called as a witness by and on behalf of the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

### Cross-Examination

By Mr. Dasteel:

Q. Mr. Mather, yesterday afternoon you testified that you sold a quantity—rather, that you purchased a quantity of barbed wire from Londono and paid \$51.00 a ton for it. Do you recall that?

A. Yes.

(Testimony of Russell H. Mather.)

Q. Did you resell that wire? A. Yes.

\* \* \*

The Court: When did you sell it?

The Witness: Over a period of 60 days, or longer than that. [1449]

The Court: In 1947 or——

The Witness: It was in 1947.

The Court: Beginning with? Is this the April sale of wire?

Mr. Dasteel: That is the wire that he purchased from Londono at \$51 a ton.

The Court: Well, when? What is the evidence on it?

Mr. Bunn: The evidence is that it was in 1946, in October, under the contract of October 22nd, but delivered up through and into December, I believe.

The Court: The objection to the question is overruled. You may answer, Mr. Mather, what you received for this wire.

Mr. Bunn: Will counsel fully determine whether he did anything to the wire before he sold it?

Q. (By Mr. Dasteel): Well, this wire that you purchased at \$51 a ton, did that price include any pickled wire? A. No, sir.

Q. Did you process the wire at all?

A. Yes.

Q. After paying \$51 per ton, what did you do in the way of processing?

A. We made a contract with Bernard Epps and Contractors Supply Company for the pickling of that wire.

(Testimony of Russell H. Mather.)

Q. How much a ton did you pay for the processing?

A. We paid from \$20 to 40—around \$43, I think it [1450] was.

Q. Now, tell us what you sold this wire for, after it was processed?

A. To tell you that, I would have to get the records. There were many, many sales on it, and the prices varied.

Q. Have you any recollection at all of the price per ton?

A. I made no contracts for the sale of the wire. They were all——

\* \* \*

Q. (By Mr. Dasteel): How much of that wire was processed—all of it?

A. All of it except the remaining tonnage which was determined to be junk.

Q. I am talking about the \$51-a-ton wire which you purchased. Is that it?      A. Yes. [1451]

\* \* \*

Q. (By Mr. Dasteel): You testified that Gonzalez & Blanco sold the wire which you purchased from Dulien for a price of between \$160 and \$180, delivered F.O.B. South America.

Mr. Bunn: Object to the question.

The Witness: I didn't testify to that.

Q. (By Mr. Dasteel): What did you testify?

A. I testified that the market value was \$160 to \$180.



(Testimony of Russell H. Mather.)

The Court: C.I.F.

The Witness: C.I.F. or C. and F.

The Court: What is "C. and F."?

The Witness: Cost and freight.

The Court: Cost and freight?

The Witness: Yes, sir. [1453]

\* \* \*

The Court: \* \* \* If the market value was \$160 to \$180 a ton C.I.F. or C. and F., say, at Panama, how much would the cost of freight be to Panama?

Mr. Bunn: If he knows.

The Court: If he knows.

The Witness: It would be a guess. Approximately \$20 to \$22 a ton.

Mr. Dasteel: I didn't hear the answer.

The Court: \$20 to \$22 a ton, he guesses. [1454]

\* \* \*

The Court: Do you ship any to Colombia, or do you know the freight rate to Colombia per ton?

The Witness: Around \$22 to \$25, I think.

Mr. Bunn: That is by water, isn't it?

The Witness: By water.

Q. (By Mr. Dasteel): I refer you to Exhibits 51, 52, 53, and 54, and ask you the market value in Los Angeles, as between July and November, 1946, of Exhibit No. 54?      A. I will have to look at it.

Q. All right.

(Testimony of Russell H. Mather.)

(Witness examines wire.)

The Court: 51 is on your right, and they go on to 54, which is the black wire.

The Witness: This is 54?

Mr. Dasteel: Yes, that is.

The Witness: \$120 to \$140.

The Court: Los Angeles free on board?

The Witness: That would be our delivered price. We would gauge our price in accordance with the delivery.

The Court: He is asking about the market price.

Mr. Dasteel: Los Angeles.

The Witness: We sold no wire in Los Angeles. I don't know.

Q. (By Mr. Dasteel): But you would base your price on Los Angeles at all times, would you [1455] not? A. No, we would not.

\* \* \*

Mr. Bunn: But he said without the records of Gonzalez & Blanco he can't answer those questions. [1456]

\* \* \*

The Court: With wire like Exhibit 54, what would you get in Mexico City per ton?

\* \* \*

Mr. Bunn: I am going to object to the Mexico City because that goes by rail, transportation by rail. [1457]

Mr. Dasteel: Take a seaport.

(Testimony of Russell H. Mather.)

The Court: Say, a seaport in South America, Panama, if you know.

Mr. Bunn: To which transportation could be made by water, if the court please?

The Court: Yes.

\* \* \*

The Court: Would you answer the question I asked?

The Witness: Between \$120 and \$140 per ton.

The Court: That is to say, the seller would have to pay the freight?

The Witness: We had so many. I will have to think just a minute. It would either be—to South America it would be a delivered price ranging between \$120 and \$140. [1458]

\* \* \*

Q. (By Mr. Dasteel): Well, where did you ship wire to? What part of South America?

A. We shipped our wire to Venezuela. I think we shipped some to Colombia. I would have to check the records to find out. It has been four years ago. I don't remember all the countries. The majority of the wire I will say went to Mexico.

Q. Then the freight shipment of the wire, then, could have been by boat? A. It was.

Q. All right. Now, then, your testimony is that the price delivered in South America was between \$120 and \$140 a ton for Exhibit No. 54. Now, look at Exhibit No. 53. What would the price be on that wire? [1459]

\* \* \*



(Testimony of Russell H. Mather.)

The Witness: In its present condition?

Q. (By Mr. Dasteel): Yes, as it appears to you.

A. It would be unsalable.

Mr. O'Malley: Is the witness basing that as of the time of this transaction or as of the present time?

The Witness: At the time of the transaction.

Q. (By Mr. Dasteel): At the present time would you say that this would be unsalable? Is that your testimony as an expert, that that is unsalable?

A. That we could not sell that wire.

\* \* \*

Q. (By Mr. Dasteel): I draw your attention to Exhibit No. 52. What would your answer be to the same question?

A. We could not sell it in that condition. [1460]

\* \* \*

Q. And what price would have been the reasonable market value or market price on Exhibit No. 51 in the same period you have testified as to the market price of Exhibit No. 54?

The Court: In ton lots?

Mr. Dasteel: In ton lots, yes, your Honor.

The Witness: Between \$160 and \$180.

The Court: That is delivered?

The Witness: Yes, sir.

The Court: To any point?

The Witness: To the various points.

The Court: To the northern points of South America?

(Testimony of Russell H. Mather.)

The Witness: Yes, sir.

Q. (By Mr. Dasteel): Drawing your attention again to Exhibits No. 52 and 53, could both or either one of those be processed at this time so that there would be a market price for it? A. Today?

Q. Yes. A. No, I don't think so.

Q. As of that time, 1946? A. Yes.

Q. That would have been salable in 1946?

A. After processing. [1461]

Q. After processing. And then what would the market price be——

The Court: For which one?

Q. (By Mr. Dasteel): For No. 53 first, after processing. A. Between \$120 and \$140.

Q. And 52? A. They are both the same.

\* \* \*

Mr. O'Malley: I will have a very few questions.

### Cross-Examination

By Mr. O'Malley:

Q. Mr. Mather, I believe you testified that you made a purported selection of your wire in Honolulu sometime in May, 1946; is that correct?

A. Yes.

Q. And that was subsequent to your purchase of the wire; is that correct?

A. No, sir. It was subsequent?

Q. Yes. A. Yes, it was.

Q. It was after the purchase of the wire. Now,

(Testimony of Russell H. Mather.)

this so-called selection was made in Honolulu; is that correct?      A. Yes.

Q. And when you made this so-called selection, did you [1462] ever make a segregation of your 1500 tons of wire into a separate lot or lots, which you could identify as the wire belonging to Gonzalez & Blanco?      A. No.

The Court: That is in Honolulu?

Q. (By Mr. O'Malley): In Honolulu?

A. No.

Q. Did you place any labels or identifying marks on it in any way?      A. No.

Q. Now, when the vessel, the White Squall, docked in Long Beach, and I believe the date is in evidence as being July 26, 1946, you made an examination of the wire in the hold of the ship; is that correct?      A. Cursory.

Q. You did see the wire in the hold of the ship?

A. Yes.

Q. And did it there have any labels or identifying marks on it in any way?      A. No.

Q. And could you then and there identify the wire that you purchased? Could you identify a lot of 1500 tons of wire that you had purchased in the hold of the ship?      A. No. [1463]

\* \* \*

The Court: By the way, if I may interrupt. While you are still in Honolulu——

Mr. O'Malley: Yes.

The Court: ——did you remain there while the bill of lading was made out?



(Testimony of Russell H. Mather.)

The Witness: No, sir.

The Court: You were not there when the loading began or finished? [1464]

The Witness: No, sir.

The Court: Did you leave any person there and designate him as your representative in connection with the loading or making out of the bill of lading?

The Witness: We had a representative there supposedly to protect our interests in the loading or placing on the dock of the wire.

The Court: Who was that?

The Witness: Mr. Porter, of MacDonald & Porter.

\* \* \*

Q. Very well. Now, going on a little bit to the transaction in which you purchased barbed wire from Mr. Londono. I think it is in evidence, Mr. Mather, that that purchase was made on the date of October 24, 1946. [1465]

Mr. Diether: 22.

Mr. Bunn: The contract is dated the 22nd, Mr. O'Malley.

Mr. O'Malley: Very well.

The Court: I think it was signed on the 24th.

Mr. Bunn: It was signed on the 24th, and dated the 22nd.

Mr. O'Malley: Very well.

Q. (By Mr. O'Malley): Where was the wire at the time you made your purchase? Where was it physically located? A. Pier A, Long Beach.

(Testimony of Russell H. Mather.)

Q. Over what period of time did Gonzalez & Blanco pick up the wire? By that I am referring now to the Londono wire.

A. My recollection is that it was a period of months, with an interruption because of labor trouble.

Q. Very well. Now, approximately how many months ensued during which you picked up that wire, to your best recollection?

A. I would say probably six or seven.

Q. Between six and seven months, is that your best estimate of the time? A. That's correct.

Q. Very well. Now, between the date of the contract, which was October 22nd, and the date when you finally picked up all of your wire, the portion which had not been picked up [1466] remained on the dock; is that correct? A. That's right.

Q. Do you know whether it was under—it was in an open space and it was unguarded; is that correct?

A. It wasn't unguarded. I imagine they give you protection. After all, you paid storage space.

Q. Do you know whether it was under any kind of guard, or is that merely your conclusion?

A. It is my conclusion due to the fact that the dock in holding property for shippers or receivers is responsible for quantities.

Q. It is merely your conclusion that it should have been under guard; is that correct?

A. I assumed that it was.

(Testimony of Russell H. Mather.)

Q. (By Mr. O'Malley): Now, at the time the wire was [1467] purchased, on or about October 22nd, did you make any physical count of the wire in any way? A. No.

Q. You did not? A. No.

Q. You did not weigh the wire? A. No.

Q. And you did not count the rolls?

A. No.

Q. So you don't know how much was on the dock at the time you purchased it; is that correct?

A. Just an estimate.

Q. It was merely an estimate on your part?

A. Right.

\* \* \*

Q. (By Mr. O'Malley): Is it your testimony, then, that [1468] the market value C.I.F. a northern port in South America is approximately \$160 to \$180 per ton for Exhibit 51, for identification? That is the galvanized barbed wire. Is that correct?

A. Yes.

Q. And with respect to Exhibit 54, which is the wire you testified was good black wire, I believe it is your testimony that it had a value C.I.F. a northern port of South America of \$120 to \$140 a ton; is that right? A. Yes.

Q. And you testified that you paid \$51 a ton for the wire purchased from Londono; is that correct?

A. We paid \$51 to Londono.

The Court: Which one of those exhibits would that correspond to, if any?



(Testimony of Russell H. Mather.)

The Witness: 52 and 53, and similar wire. [1469]

\* \* \*

Q. (By Mr. O'Malley): Now, do you know the fair market [1472] value in Los Angeles during the period in question, namely, from July, 1946, to December, 1946, of barbed wire of the standard of Exhibit 51, for identification, namely, the galvanized barbed wire for transshipment out of the United States?

Mr. Bunn: To where?

Q. (By Mr. O'Malley): To a South American port? A. Yes.

Q. And what is that?

A. \$160 to \$180 a ton.

The Court: C.I.F.?

The Witness: C.I.F.

The Court: That is cost and freight paid, the delivered price?

The Witness: Yes.

Q. (By Mr. O'Malley): And with respect to Exhibit 54, for identification, namely, the wire which you have testified is good galvanized black wire, what is the fair market value in Los Angeles for transshipment to a South American port of wire of that character? [1473]

\* \* \*

A. \$120 to \$140 per ton.

The Court: Delivered?

The Witness: Delivered.

\* \* \*

(Testimony of Russell H. Mather.)

Mr. Bunn: May I make one comment, and then I will try to hush on that score. I call the court's attention to the fact that it is clearly in evidence here, and exclusively so, that Mr. Londono's expressed intention, both to Dulien and to Mr. Schroeder at the bank, was that this wire was all in theory before he saw it to be shipped to South America. None of it was to be sold here.

The Court: I am aware of that. I am also aware of the fact that you consider it a part of your obligation, as Mr. Londono's counsel, to show a good faith effort to mitigate the damages.

Mr. Bunn: Yes, sir.

The Court: And that according to the evidence so far introduced, [1474] there was a certain amount of the wire which could not be transshipped and sold in South America.

Mr. Bunn: Right, sir.

The Court: And it had to be sold here. Therefore, it becomes material sooner or later in this trial as to what the fair market value of barbed wire was here.

Mr. Bunn: But there was none of the good character available for him to sell here. [1475]

\* \* \*

Mr. Dasteel: Your Honor please, in the noon hour we would like the court's permission—I believe Mr. Morrow would, too, and Mr. Diether, and Mr. Laven, as well as myself, although I don't know whether Mr. Laven knows what I am going to ask,

(Testimony of Russell H. Mather.)

but he is included—to cut samples just about seven inches long off the four rolls? We have clippers here.

Mr. Bunn: No objection.

The Court: Very well. [1477]

\* \* \*

The Court: But they will be marked for identification, and taken out with the tag on. [1478]

\* \* \*

The Court: That is right. They will be 51-A, -B, -C, and -D I think, Mr. Clerk, that we might mark them according to the designations we have given the different defendants, that is, the one taken by Dulien will be 51-D, the one taken by the bank will be 51-C, and the one taken by Matson will be 51-M, and the one taken by the government will be 51-US.

(The samples referred to were marked Plaintiff's Exhibits 51-D, 51-C, 51-M, and 51-US, for identification.) [1479]

\* \* \*

(The samples referred to were marked Plaintiff's Exhibits 52-D, 52-C, 52-M, and 52-US, for identification.)

\* \* \*

(The samples referred to were marked Plaintiff's Exhibits 53-D, 53-M, and 53-US, for identification.)

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